550 PRESENT TARIFF N. Y. C. 20 I. C. C. 499 PAGES 118 TO 125 PROVIDES FOLLOWING ON RECIPROCAL SWITCHING

Federal Packing Co	⊕3. 47 C
Earl C. Gibbs Inc	⊕3. 47 C
Kohlenaer Bros	⊕3. 47 C
Kruisburg & Krasny	⊕3. 47 C
Lake Erie Provision Co. (Cleveland Provision Co.)	3. 47 C
Long Dressed Beef Co	3. 47 C
Ohio Provision Co	3. 47 C
Standard Beef Co	⊕3. 47 C
Swift & Co	⊕3. 47 C
Theurer Norton Provision Co	⊕3. 47 C
Hughes Provision Co	⊕3. 47 C

Explanation of references

C. Means N. Y. C. (C) as provided in tariff and indicates the district in which located. Explained on page 34 of tariff as being New York Central R. R. Co., The Cleveland, Cincinnati, Chicago and St. Louis District.

⊕ Not applicable on livestock.

551 *Exhibit No. 11*

STIPULATION

In Big Four File No. 44540, entitled "Peoples Packing Company," found in the office of Mr. J. E. Anderson, Freight Traffic Manager, New York Central System at Cleveland, Ohio, are various communications between A. R. Fay, Traffic Manager, Swift & Company, and traffic officers of the C. C. C. & St. L. Railway Company, beginning September 14, 1907 and continuing to April 26, 1912, referring to the early stages of providing a sidetrack for the Peoples Packing Company (a predecessor of and purchased by Swift & Company, January 24, 1905) and also for Theurer Norton Packing Company, Blumenstock & Reid, and an unnamed packing company located, or then locating, along West 63rd Street, known as Prim Avenue during 1907 and for some time thereafter. The earliest dated letter in the file is one written September 14, 1907, by A. R. Fay, representing the Traffic Department of Swift & Company, to Mr. B. B. Mitchell, General Freight Traffic Manager, New York Central Lines, Chicago, Ill., reading as follows:

"I enclose herewith a diagram, which will explain the situation at Cleveland regarding the Peoples Packing Company.

"The track along Prim Street would serve four industries, of which the out and in business, I have estimated, would run from 150 to 175 cars (loaded) per week. This traffic goes east, south, and west and I find G. H. Ingalls knows something of this track matter."

Next on top in the file is a diagram, marked "Stipulation Exhibit A," which apparently accompanied Mr. Fay's letter of September 14, 1907. Numerous conferences are indicated to have been held following Mr. Fay's letter of September 14, 1907, between Mr. Fay, Traffic Manager of Swift & Company and officers of the C. C. C. & St. L. Ry. Co., following which the Peoples Packing Com-
552 pany apparently obtained an Ordinance, No. 10944, from the Council of the City of Cleveland, dated May 25, 1908, granting to the C. C. C. & St. L. Rwy. Co. the right to construct a spur and sidetrack to be built over and along West 63rd Street to connect the C. C. C. & St. L. Rwy. main track with packing companies located and then locating along West 63rd Street. After this Ordinance to cross West 63rd Street and make a connection with the main track of the C. C. C. & St. L. Rwy. Co. was passed the Lake Erie Provision Company obtained a temporary restraining order, on June 5, 1908, which was later made permanent, restraining the C. C. C. & St. L. Rwy. Co. from constructing this spur track over and along West 63rd Street to connect what was referred to as the Prim Street track with the C. C. C. & St. L. Rwy. main track, based on the claim that the construction and operation over this spur track would cause irreparable injury and loss to the Lake Erie Provision Company.

Swift & Company, then owner of the Peoples Packing Company, continued its desire to construct this sidetrack along and across Prim Street and connecting directly with the main track of the C. C. C. & St. L. Rwy. Co. and requested the C. C. C. & St. L. Rwy. Co. to file a condemnation action against the Lake Erie Provision Company to procure land necessary to enable this connection to be made. Said action was filed in the Court of Insolvency of Cuyahoga County. At the May 1909 Term, the Court of Insolvency granted the petition of the railroad company to condemn part of the Lake Erie Provision Company land and awarded damages to the Lake Erie Provision Company in the sum of $13,500.00.

The Railroad Company was unwilling to construct this track unless the Peoples Packing Company and three other packing concerns who desired the track would pay the damages assessed in the condemnation proceedings. Through Swift & Co.
553 the Peoples Packing Company indicated its willingness to contribute $2,000.00 toward the construction of this track and three other packing concerns were reported willing to contribute $1,000.00, provided the track was built without further

delay and without waiting for the condemnation proceedings to be settled. See Mr. Fay's letter of July 30, 1909, marked "Stipulation Exhibit B" attached hereto. The total cost of building the track, damages awarded the Lake Erie Provision Company, and estimated damages for four additional parcels of land approximated $24,500.00. Further conferences ensued, as indicated by Mr. Fay's letter dated September 11, 1909. The Railroad Company was willing to bear the cost of constructing the track if the packing companies referred to above would assume the property damage, litigation costs, etc.

In March 1910, Swift & Company indicated to the Freight Traffic Manager of the C. C. C. & St. L. Ry. Co. that inasmuch as it seemed impossible to do anything with a connection direct from Prim Street, Swift & Company believed that some arrangement might be made to get a sidetrack into the Peoples Packing Company plant crossing West 65th Street, then known as Gordon Avenue. The railroad company indicated its willingness to build the track across West 65th Street if the Peoples Packing Company and other packers along West 63rd Street obtained permission to cross West 65th Street and furnished the right-of-way, with perpetual easement, for this track without cost. An Ordinance, No. 18748–A, was passed by the Council of the City of Cleveland on September 6, 1910, permitting the track to be built across West 65th Street by the C. C. C. & St. L. Rwy. Co. The right-of-way for this track east of the east line of West 65th Street was procured by Swift & Company and deeded to the C. C. C. & St.
354 L. Rwy. Co. with the exception of a small parcel of Sublot 166 adjoining the easterly line of West 65th Street and belonging to The Cleveland Union Stock Yards Company.

After this sidetrack connecting with the sidetracks on the property of the Cleveland Union Stock Yards Company west of West 65th Street was built across West 65th Street to the Peoples Packing Company the appropriation action against the Lake Erie Provision Company for connecting the proposed Prim Street Track with the C. C. C. & St. L. Rwy. main track was dismissed and Swift & Company, in a letter dated November 23, 1910, signed by A. R. Fay, Stipulation Exhibit "C" attached, and letter dated January 7, 1911, signed by A. R. Fay, Stipulation Exhibit "D" attached, agreed to pay $575.00, which was one-half of the amount which the railroad company agreed to pay the Lake Erie Provision Company in dismissing the appropriation proceedings.

555 *Stipulation Exhibit "B"*

SWIFT & COMPANY

Union Stock Yards

CHICAGO

JULY 30, 1908.

MR. G. H. INGALLS,
F. T. Mgr., New York Central Lines,
Chicago, Ill.

DEAR SIR: Replying to your letter of the 29th.

Our statement was that we thought the packers would contribute $5,000.00 towards the damages account of building the Prim Street track, and that if the others would give $3,000.00, or more, the Peoples Packing Co., would give enough to make up the $5,000.00, but not to exceed $2,000.00 in any case, provided the track was built without further delay and without waiting for the lawsuits to be settled.

This confirms what I have told you before and please say if it is satis.actory and if you will proceed on these lines.

Yours respectfully,

SWIFT & COMPANY,
Per (Sgd.) A. R. FAY.

R. R. Dept.
ARF.—DB.

556 *Stipulation Exhibit "C"*

SWIFT & COMPANY
Union Stock Yards
CHICAGO

Transportation Department.

NOVEMBER 23RD, 1910.

MR. GEO. H. INGALLS,
F. T. M., New York Central Lines,
Chicago, Ill.

DEAR SIR: Replying to your letter of the 12th inst., File 44540:

We hope and think you will be able to do better with the Lake Erie Provision Company than the amount mentioned in your letter. We are getting no assistance from the other packers in this matter and whatever is paid apparently the Peoples Packing Company will have to stand.

As stated to you verbally yesterday, the Peoples Packing Company paid $5,000.00 for four lots, in order to secure a right-of-way and give you easement over it. In view of this expense and the fact that we are getting no assistance from the other packers, Peoples Pkg. Company will very greatly appreciate a material reduction from the $1,150.00 amount for attorney's fees, if you can secure it for them.

Please reply.

Yours respectfully,

SWIFT & COMPANY,
Per (Signed) A. R. FAY.

ARF:B.

557 *Stipulation Exhibit "D"*

SWIFT & COMPANY
Union Stock Yards
CHICAGO

Transportation Department.

JANUARY 7TH, 1911.

MR. GEO. H. INGALLS,
F. T. M., New York Central Lines,
Chicago, Ill.

DEAR SIR: Your letter of the 3rd instant, dated Cincinnati.

Our Legal Department have agreed that I might accept your proposition of paying 50% of the $1,150.00 mentioned in your letter of November 12th, on account of the Peoples Packing Company. We will accept bill for that amount; namely, $575.00.

Yours respectfully,

SWIFT & COMPANY,
Per (Signed) A. R. FAY.

ARF:B.

P. S.—Please send the bill to me at this office under personal cover.

559 *Exhibit No. 14*

This Agreement, Made this Tenth day of May in the year 1899, between the The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a Corporation existing under and by virtue of the laws of Ohio and Indiana, as First Party, and The Cleveland Stock Yards Company, a Corporation existing under and by virtue of the Laws of the State of Ohio, as Second Party, witnesseth:

Whereas, The Second Party desires the construction of two (2) sidetracks at Cleveland, Ohio, as shown by attached plat which is made a part hereof.

Station on the Cleveland Division of the C. C. C. & St. L. Railway Company, in the county of Cuyahoga, State of Ohio, one of Said sidetracks to be connected with a sidetrack of the Division aforesaid, on the easterly side thereof, extending southwardly about seventeen hundred and fifty-one (1,751) feet, and the other one of said sidetracks to be the west side thereof, extending southwardly six hundred and forty-nine (649) feet, of which about one hundred and twenty (120) feet, shall be on the land of First Party, and about twenty-two hundred and eighty (2,280) feet on land owned and controlled by the Second Party.

Now, therefore, in consideration of one dollar and of benefits to the Second Party it is agreed between the parties, that the First Party will construct said sidetrack as above indicated, upon the following terms and conditions:

(1) Said Second Party shall do the necessary grading for said tracks at its own cost and expense.

(2) Said First Party to furnish all the necessary rails and proper fastenings including switches for said sidetracks, and lay the same.

560 (3) Before the commencement of the work said Second Party is to pay to said First Party an amount equal to the estimated cost of said sidetracks as named in article "two" and upon completion of the work, the difference between the actual cost and the estimated cost is to be paid by said Second Party to said First Party or, returned by said First Party to said Second Party as the case may be.

(4) Said Second Party will give to said First Party all its in- and out-bound business which it can control provided said First Party gives equal rates.

(5) Said sidetrack shall be maintained by the First Party, and the cost thereof shall be borne by the Second Party.

(6) The ownership of said track shall be vested as follows: The said one hundred and twenty (120) feet of track located on First Party's property to belong to said First Party; the remaining twenty-two hundred and eighty (2,280) feet (more or less) of said track to belong to said Second Party, and each party hereby disclaims ownership in any other portion of said sidetrack than as above designated, but the First Party shall have the right to use, without cost, the whole or any part of said siding in connec-

tion with other business than that of the Second Party, when the same is not occupied by the Second Party, when the same is not occupied by the Second Party, provided such use of the siding will not interfere with the business of the Second Party.

(7) The Second Party agrees that, without the written consent of the First Party, it will not direct or authorize the use of said track by or for the benefit of any other party not one of the parties hereto.

(8) The Second Party agrees to exercise the greatest care in the management of the siding herein provided for; to prevent cars or other obstructions from getting out upon or too close to the main or other tracks, to secure the safe closing and locking of the main switch, or switches, and to keep the inner safety switch (where such switch is provided), in proper position: also, to use such means and care, generally, as will tend to avoid accidents of any kind.

(9) The Second Party agrees that the First Party, its successors or assigns, shall have the right any time, after 60 days notice in writing to the Second Party, to discontinue the use of said sidetrack, to remove the connections, switches, and frogs upon the property of the First Party, and to enter upon the property of the Second Party, and take up and remove so much of said sidetrack belonging to the First Party as may be
561 located thereon; the First Party in such case to commit no unnecessary injury to the property of the Second Party.

(10) With full knowledge of the difficulty of preventing the emission of sparks and fire from engines and trains, it is expressly stipulated, agreed, and understood, that as a part of the consideration for the execution of this agreement, the Second Party is to assume all risk of fires and the danger thereof to any property or structure on account of the use of said sidetrack, to save harmless the First Party from all liability for damage by fire, to any such property or structure which in the operation of First Party's road may accidentally or negligently be communicated to any such property or structure, anything in any law of the state of Ohio to the contrary notwithstanding.

---------- lessor of Second Party hereby approves and adopts the foregoing agreement as his own, as far as assesses to himself.

In testimony whereof the parties hereto have caused this agreement to be executed in duplicate the day and year first above

written. The interlineations in the third, fourth and fifth lines of article "ten" were made before the execution hereof.

O. K. (S. O. B.).

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,

By (Signed) M. NUGNET (?), *President.*

THE CLEVELAND STOCK YARDS COMPANY,

[SEAL]

By (Signed) JOHN F. WHITELAW, *President,*

Attest:

(Sgd.) E. F. OSBORN, *Secretary.*

Attest:

(Sgd.) E. MURPHY, *Secretary.*

562 *Exhibit No. 15*

(Sheet 1 of 12 sheets.)

This Exhibit contains Sidetrack Agreement dated March 17th, 1938, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago, and St. Louis Railway, The Standard Beef Company, and The Cleveland Union Stock Yards Company.

563 (Sheet 2 of 12 sheets.)

PRIVATE SIDETRACK AGREEMENT

This agreement made this 17th day of March 1938, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway (hereinafter called the Railroad Company), party of the first part, and The Standard Beef Company, of the City of Cleveland, County of Cuyahoga, and State of Ohio (hereinafter called the Industry), party of the second part, and The Cleveland Union Stock Yards Company, party of the third part; witnesseth:

Whereas, the Industry has applied to the Railroad Company for a sidetrack connection with the Railroad Company's line of railroad in the City of Cleveland, County of Cuyahoga, and State of Ohio.

Now therefore, in consideration of the covenants and agreements herein contained, and the mutual benefits to be derived thereunder, the parties hereto agree that the said sidetrack has heretofore been constructed and shall be maintained subject to the following terms and conditions:

First. The term "track" as used herein includes all track, roadbed, bridges, and other supporting structures or appurtenances

used directly in connection therewith, shown in red and yellow colors on blue print No. C–7040–K3 dated Feb. 17, 1938, Rev. Mar. 9, 1938 hereto attached and made a part of this agreement.

564 (Sheet 3 of 12 sheets.)

(a) The Industry shall, without cost to the Railroad Company, provide the necessary right-of-way for the portion of the track extending beyond the Railroad Company's premises; procure and maintain in effect all grants, licenses, franchises, or permits necessary for the construction, maintenance, and operation of the track, in, upon, or across any public road, street, or other property or reservation which may be traversed or intersected thereby; assume the obligations imposed in or by reason of such grants, licenses, franchises, or permits, or hereafter imposed by law or other public authority in respect thereof including all taxes, assessments, and license fees, policing and the erection, maintenance, and operation of any crossing gates or other warnings or protection, and indemnify and hold harmless the Railroad Company from any and all cost and expense in connection therewith.

(b) The Industry, upon approval of the Railroad Company as provided in subparagraph (c) of this Section First may, at its own expense, construct over or under said track, hoppers, pits, or other loading or unloading devices, and when constructed they shall come under the provisions of this agreement, and all the terms and conditions hereof applying to the track shall apply with equal force to said hoppers, pits, or other loading or unloading devices except pipe lines which shall be covered by separate agreement.

565 (Sheet 4 of 12 sheets.)

(c) The Industry shall submit to the Railroad Company detail plans of any hoppers, pits, or other loading or unloading devices, and the construction thereof shall not be commenced until said plans have been approved by the Railroad Company.

* * * * *

The provisions relating to the ownership and maintenance of said track are found in the agreement between The New York Central Railroad Company as first party and The Cleveland Union Stock Yards Company as second party, to which agreement reference is hereby made.

Second. No casinghead gasoline shall be handled on said track without special permission. Other volatile liquids may be handled, provided the Industry complies with the regulations contained in ARA Circulars Nos. 2084–B and ES–3, or any regulations amendatory thereof or supplemental thereto, or provides,

566 (Sheet 5 of 12 sheets.)

at its own expense, such safeguards and protective devices as may be necessary to prevent the occurrence of any loss, damage or injury by reason of the inflammable or combustible nature of the substances handled. The Railroad Company will, if it finds the same necessary, install and maintain, at its own expense, insulated rail joints separating said track from all connecting tracks.

Third. In the event that the Railroad Company shall furnish material or labor herein undertaken to be furnished by the Industry, the Industry shall and will pay to the Railroad Company, promptly upon rendition of bills, the entire cost thereof, including unemployment, retirement, and other pay roll taxes, and the Railroad Company's current percentage charge to cover the expense of superintendence, supervision, and use of tools, handling and storing of material, workmen's compensation liability insurance, and accounting. Material and labor so furnished shall remain the property of the Railroad Company until such payment is made, and if such payment shall be in default beyond the period of thirty (30) days after bill is rendered, the Railroad Company, in addition to all other remedies, may discontinue all operations over and remove said tracks. The Railroad Company may, at its option, before furnishing such material or labor, require the Industry to advance to the Railroad Company the estimated cost thereof, which advance shall be adjusted to actual cost upon completion of the work.

567 (Sheet 6 of 12 sheets.)

Fourth. The Industry shall keep said track clear of obstructions, and shall not place or allow any temporary or permanent structures or obstructions of any kind within the space of eight and one-half feet on either side of the center line of said track, or within the space of twenty-one feet above the said track (being the standard clearance for structures of the Railroad Company), except as to the clearances, if any, less than standard shown upon said blueprint; provided, however, That no wire or cable line of any kind shall be placed or allowed within such further space on either side or above the said track as shall be determined by the Railroad Company in each particular case.

All clearances less than standard shown on said blueprint shall be protected by standard warning guards or signs placed in a manner and located satisfactorily to the duly authorized representative of the Railroad Company. The expense of installing and maintaining such guards or signs shall be borne by the Industry. If the structures or obstructions at said points are changed or removed, the clearance at said points shall then be made not less than standard.

The Industry shall assume and indemnify and hold harmless the Railroad Company for and from any and all liability, loss and expense (including Workmen's Compensation), resulting

568 (Sheet 7 of 12 sheets.)

from loss of life or damage or injury to persons or property (including employees of either of the parties hereto, arising in whole or in part by reason of or in any way resulting from the presence or maintenance of structures or obstructions encroaching upon the aforesaid standard clearances or from the presence of wire or cable lines over or adjacent to said track other than structures or obstructions, wire or cable lines belonging to the Railroad Company or its licensees.

Fifth. The Railroad Company may use the part of said track on its premises and may connect such part with other tracks, and after obtaining the specific written consent of the Industry, may use the part of said track on the premises of the Industry and may connect the same with other tracks, for the operation of its railroad or the use of third parties, provided such use or connection shall not interfere unreasonably with the use of the track, which is the subject of this agreement, for the business of the Industry. In the event of such use or connection to serve other patrons of the Railroad Company, or as a connection with other tracks owned or used by the Railroad Company, there shall be a reduction in the Industry's expense of maintenance and an adjustment of its original outlay, as to the part of said track so used, to be determined by the character and extent of such use.

569 (Sheet 8 of 12 sheets.)

The Industry agrees not to extend such part of said track as may be on premises owned, controlled, or occupied by the Industry or to connect it with any other track, or permit the use thereof by anyone not a party hereto without first obtaining the written consent of the Railroad Company. In the event of the use thereof by anyone not a party hereto, with such written consent but without entering into a written agreement with the Railroad Company, the Industry shall be responsible for the entire maintenance of such extensions thereto or connection therewith, and shall indemnify the Railroad Company against all liability for loss of life or damage or injury to persons or property by reason of or resulting from such use by others as if the Industry were the sole user.

Sixth. The Industry assumes all responsibility for and shall indemnify and hold harmless the Railroad Company from and against loss or damage to property of the Industry or to property upon the premises of the Industry or upon said track regardless of the Railroad Company's negligence, arising from fire caused

by locomotives operated by the Railroad Company for the purpose of serving said Industry, except to the premises of the Railroad Company and the rolling stock belonging to the Railroad Company or to third parties and to shipments then in the common carrier custody of the Railroad Company.

570 (Sheet 9 of 12 sheets.)

In respect of all loss or damage to property, other than by fire caused as aforesaid, or in respect of injury to or death of persons caused by or in connection with the construction, operation, maintenance, use, presence of removal of said track (a) the Railroad Company shall assume responsibility for and hold the Industry harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Railroad Company, its agents, or employees; (b) the parties hereto shall equally bear all losses, damages, claims, and judgments arising from or growing out of the joint or concurring actionable acts or omissions of both parties hereto, their respective agents or employees; and (c) the Industry shall assume the responsibility for and save the Railroad Company harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Industry, its agents, or employees.

Seventh. If at any time or times hereafter the Railroad Company makes any changes in the location or elevation of its line of railroad at the point of connection with said track, the Industry shall, at its own expense, make such changes in the portion of the track to be constructed and maintained by it as may be necessary to accommodate the changes to be made by the Railroad Company.

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If the Railroad Company shall, at any time, equip its railroad for operation by electricity, the Railroad Company may install and maintain third rail or overhead trolley and other appurtenances for electrified operation on said track, and the Industry shall reimburse the Railroad Company for the cost of such installation and maintenance beyond the clearance point.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect, except that whatever liability may have accrued to either party as against the other prior to the date of termination hereof, shall continue to remain in force. Such notice on the part of the Railroad Company may be given, at its option, by posting it upon or near said track, and this agreement in such case shall terminate thirty (30) days after such posting. Within thirty days after the termination as aforesaid of this agreement either party may remove from the

premises of the other all property belonging to it under this agreement, and all property not so removed from the premises of the other within that time shall belong to the party upon whose premises the property remains.

Ninth. The provisions hereof shall apply to and govern all changes in grade or location which may be made in said track and all extensions or additions thereto.

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Tenth. This agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties hereto, except that the Industry shall not assign this contract or any rights hereunder without first obtaining the written consent of the Railroad Company.

In witness whereof, the parties hereto have duly executed this agreement in triplicate the day and year first above written.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By F. S. RISLEY, [LS]
Asst. Vice Pres. & Genl. Mgr.

THE STANDARD BEEF COMPANY,

By STANDARD BEEF CO.
E. FRESSON [LS], *Sec.*

Form, approved W. W. King.
Description, approved R. O. Rote.

Terms and Conditions, Approved, H. W. F., G. H. J.

The Cleveland Union Stock Yards Company hereby consents to the use of that part of said track lettered BCDEF colored yellow on said plan by the Railroad Company for the purpose of serving The Standard Beef Company. Such use shall, as between the Railroad Company and The Cleveland Union Stock Yards Company, be without charge against the Railroad Company save and except the cost of maintaining such track but in all other respects such use shall be without prejudice to the rights of The Cleveland Union Stock Yards Company, the Railroad Company, or The Standard Beef Company under any and all previous

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agreements, contracts, or other legal documents between The New York Central Railroad Company or its predecessor in interest or between The Cleveland Union Stock Yards Company and The Standard Beef Company or their predecessor in title, all such rights being expressly reserved by the parties hereto. The Cleveland Union Stock Yards Company reserves the right to can-

cel this consent upon not less than thirty (30) days' notice in writing.

THE CLEVELAND UNION STOCK YARDS COMPANY,
By A. Z. BAKER [LS], *Pres.*

574 *Exhibit No. 16*

This Exhibit contains Private Side Track Agreement between The C. C. C. & Saint L. Ry. Co., Kellen Kreinberg and William A. Krasny, d. b. a. Kreinberg and Krasny, and the Cleveland Union Stock Yards Company:

Assignment of Agreement, dated July 7th, 1943, from Kellen Kreinberg and William A. Krasny, copartners d. b. a. Kreinberg and Krasny, to Kreinberg and Krasny, Inc.; and

Application and Consent, dated July 7th, 1943, of Kreinberg and Krasny, Inc., for permission to allow use of said track by United States Coast Guard, Commissary Supply Depot, and consent of The New York Central Railroad Company to such use of track.

575 (Sheet 2 of 14 sheets.)

PRIVATE SIDE TRACK AGREEMENT

This Agreement, made and executed in triplicate this first (1st) day of August 1927, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, Kellen Kreinberg and William A. Krasny, composing a partnership and doing business under the name of Kreinberg and Krasny, as Second Party, said First Party being hereinafter called the "Railroad," and said Second Party being hereinafter called the "Industry," and the Cleveland Union Stock Yards Company, a corporation, as Third Party, witnesseth:

Whereas, the Industry desires and has requested the Railroad to construct a track extension to an existing track known as Valuation No. 254, at Cleveland, Cuyahoga County, Ohio; most of which said track No. 254, together with the track connecting therewith extending to and connecting with the Railroad's main track connection, is owned by said Third Party, and

Whereas, said Railroad and said Third Party, insofar as their respective interests are concerned, are agreeable to the construction, of said track extension for said Industry and, in connection therewith, to the necessary incidental use of other tracks extending from the Railroad's main track connection to the location of the proposed extension.

576 (Sheet 3 of 14 sheets.)

Now, therefore, it is mutually covenanted and agreed:

First. (a) Said track extension as shown in yellow colors on the blueprint hereto attached, dated July 1st, 1927, and made a

part of this agreement, shall be constructed, owned, and maintained and the cost of such construction and maintenance shall be borne as hereinafter provided.

(b) It is understood and agreed that the term "cost" as used herein in respect of labor, material, and supervision of labor, or either, shall be inclusive of the expense of superintendence, supervision, and use of tools, handling and storing of material, workman's compensation and liability insurance, and accounting.

(c) In case any payment to be made by the Industry, as hereinafter provided, shall be in default beyond the period of thirty days after bill rendered therefor, the Railroad, in additional to all other remedies, may discontinue all operations over and remove said track.

Second. It is understood and agreed that the Industry shall:

(a) Without expense to the Railroad, obtain all licenses, franchises, and privileges, if any be necessary, for the construction, maintenance, and operation of the track extension in, upon or across any public alley, road, or street, or other public and/or private property and/or reservation which may be traversed or intersected thereby, and the necessary right of way for the portion of the track extension extending beyond the Railroad right-of-way; and the Industry shall assume all and singular the obligations imposed in or by any such license, franchise and/or

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privilege and shall indemnify and save harmless the Railroad from any and all of said obligations and from any expense in connection therewith or incident thereto, and also from any and all of said obligations and from any expense in connection therewith or incident thereto, and also from any and all obligations hereafter imposed by public officers, or by law, or otherwise, and any expense in connection therewith or incident thereto, including policing and crossing protection for that portion of said track extension in, upon, or across such public highway or other property which may be traversed or intersected thereby.

(b) Pay to the Railroad, before the commencement of work by the Railroad, the estimated cost of all labor and material provided for in Clause (a) of Article Third hereof, it being understood that, upon completion of the work, the difference between the actual cost and the estimated cost shall be paid by the Industry to the Railroad, or returned by the Railroad to the Industry as the case may be.

(c) Without expense to the Railroad, construct the roadway, necessary waterways, waterway structures, and supports for said track extension.

(d) Without expense to the Railroad maintain said track extension proposed to be about 120 feet in length, and all its appur-

tenances, inclusive of bumping post, bridges, trestles, and waterways, if any, therefor, and shall own the material contained therein, said portion of track being indicated by a yellow line upon said blueprint.

(c) Upon written notice from, and without expense to, the

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Railroad, repair or renew Industry's said track extension—inclusive of bumping post—bridges, trestles, and waterways, if any, therefor, or any of them, within the time specified in said notice and in a manner which shall be satisfactory to the Railroad.

Third. The Railroad shall perform the following:

(a) At the expense of the Industry, furnish (1) the material for the superstructure of said track extension, the ballast therefor, and the labor of laying and placing all of same, said track extension to be about 120 feet in length and to be located about as indicated by a yellow line upon said blueprint, and (2) the material for and labor of placing a bumping post at the end of said track extension.

Fourth. In the event that the Railroad shall furnish material or labor herein undertaken to be furnish by the Industry, the Industry shall and will pay to the Railroad, promptly upon rendition of bills, the entire cost thereof.

Fifth. The Industry shall, on the part of themselves and their officers, agents, and employes, keep said track extension clear of obstructions and shall not place or allow any temporary or permanent structure or other obstruction of any kind to be

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placed by their officers, agents, or employees, within the space of twenty-two (22) feet above the said track extension or within eight and one-half (8½) feet on either side of the center line of said track extension.

Sixth. The Railroad may at any time disconnect and/or refuse to place cars upon the portion of the track extension, or any portion thereof herein provided to be maintained by the Industry, if, in the judgment of the Railroad, same is in an unsafe condition, without being in any manner liable to the Industry.

Seventh. The Railroad shall have the right to cease, forthwith and without notice, all operations upon said track extension, if compelled so to do by the owners, other than the respective parties hereto, of the land upon which said track extension, or any portion thereof, may be laid.

Eighth. Except only as the parties hereto shall in writing stipulate otherwise, all provisions herein as to the aforementioned track extension shall apply to any and all additions thereto and/or

extensions thereof, and maps or prints, approved by the parties hereto, showing such additions and/or extensions may, at the option of the Railroad, be by it annexed hereto or to its original hereof and shall thereby become a part of this agreement.

* * * * *

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The Industry agrees not to extend such part of said track extension as may be on the premises owned, controlled, or occupied by the Industry, or to connect the same with any other track, or permit the use thereof by any one not a party hereto without first obtaining the written consent of the Railroad.

Tenth. It is understood that the movement of locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss of or damage to property of the Industry or to property upon its premises, regardless of the Railroad's negligence arising from fire caused by locomotives operated by the Railroad on said track extension, or in the vicinity thereof, for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless

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the Railroad for loss, damage, or injury from any act or omission of the Industry, its employes or agents, to the person or property of the parties hereto and their employes, and to the person or property of any other person, firm, or corporation, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be equally borne by them.

The term "Railroad" under this Article shall include the Tenants and Licensees of said First Party.

Eleventh. This agreement shall terminate thirty (30) days after written notice by (any) party hereto to the other parties to that effect; such notice, on the part of the Railroad, may, at its option, be given by posting it upon a conspicuous part of the premises; after which period (either) party may remove all property belonging to it under this agreement, except as herein otherwise provided.

Until terminated as above provided, this agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties hereto; Provided, however, That, as to the Industry, no assignment of this

agreement shall be valid without the written consent of the Railroad.

* * * * *

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Twelfth. It is understood and agreed that this contract shall apply to all portions of the track extension shown in colors on the blueprints attached as hereinbefore provided, which may have been constructed under this or any other agreement or otherwise prior to the making of this contract, which portions shall be and become subject to all of its terms applicable subsequent to construction, as fully as though originally constructed, maintained and operated hereunder.

Thirteenth. Said Third Party hereby consents to this agreement and executes the same indicative of its approval there-

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of.

In witness whereof, the parties hereto have duly executed this agreement in triplicate the day and year first above written.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY,
By (Sgd.) C. S. MILLARD, *General Manager.*
KREINBERG AND KRASNY,
By (Sgd.) K. KREINBERG.
And (Sgd.) WM A. KRASNY.
THE CLEVELAND UNION STOCK YARDS COMPANY,
By (Sgd.) C. Z. BAKER (?), *President.*

Approved:
(Sgd.) E. N. QUIGLEY,
General Counsel.
(Sgd. HADLEY BALDWIN,
Chief Engineer.

Witnesses:
(Sgd.) W. L. FEARATE.
(Sgd.) F. VAN HORN.

Application approved by: JEE–JDB–JEA–JAEMHS.

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APPLICATION AND CONSENT

CLEVELAND, OHIO, *July 7th, 1913.*

Kreinberg and Krasny, Inc., successor to Kallen Kreinberg and William A. Krasny, copartners doing business as Kreinberg and Krasny, Second Party to an agreement dated August 1st, 1927 with The C. C. C. & St. L. Ry. Co., predecessor to The New York Central Railroad Company, Lessee covering a side

track at Cleveland, Ohio located as shown on plan dated July 1st, 1927, which said plan is attached to the aforesaid agreement and made a part thereof, hereby makes application for permission to allow the use of said track by United States Coast Guard, Commissary Supply Depot.

In consideration of the granting of this application, the undersigned agrees that for the purpose of fixing liability, the premises, property, agents, and employes of said United States Coast Guard, Commissary Supply Depot shall be regarded as that of the undersigned, which hereby assumes all liability for loss, damages, or injuries to persons or property resulting from the use of said track arising while either it or the said United States Coast Guard, Commissary Supply Depot is being served, to the same extent as liability is now assumed by the undersigned in the aforesaid agreement.

This permission shall be subject to termination at any time by either party hereto giving to the other not less than ten (10) days written notice, whereupon at the time named in said notice, or upon the termination of the aforesaid agreement, this permis-

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sion shall fully cease and determine.

KREINBERG AND KRASNY, INC.,
By (Sgd.) JEROME KREINBERG, *Secretary.*

The New York Central Railroad Company, lessee of The C. C. C. & St. L. Ry. Co., hereby grants the foregoing application and consents to the use of said track by United States Coast Guard, Commissary Supply Depot upon the terms and conditions on said application set forth.

THE NEW YORK CENTRAL
RAILROAD COMPANY,
Lessee of The C. C. C. & St. L. Ry. Co.,
By (Sgd.) F. F. RIEPEL,
Asst. Vice Pres. & Gen. Mgr.

The Cleveland Union Stock Yards Company, third party to the aforesaid agreement, hereby consents to the use of said track by United States Coast Guard, Commissary Supply Depot.

THE CLEVELAND UNION STOCK YARDS COMPANY,
By (Sgd.) A. Z. BAKER, *President.*

New York Central.
Form Approved.
(Sgd.) W. N. KING, ocp.
Description Approved———.
Terms and Conditions Approved———.

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ASSIGNMENT OF AGREEMENT

CLEVELAND, OHIO, *July 7th, 1945.*

For a valuable consideration received to their full satisfaction, Kallem Kreinberg and William A. Krasny, copartners doing business as Kreinberg and Krasny, hereby sell, assign, transfer, and convey to Kreinberg and Krasny, Inc., all their right, title to, and interest in the certain agreement dated August 1st, 1927, between the C. C. C. & St. L. Ry. Co., predecessor to The New York Central Railroad Company Lessee as First Party, Kallem Kreinberg and William A. Krasny, d. b. a. Kreinberg and Krasny, as Second Party, and The Cleveland Union Stock Yards Company as Third Party, relating to a side track at Cleveland, Ohio, located as shown on Plan dated July 1st, 1927, which said plan is attached to the aforesaid agreement and made a part thereof.

KALLEM KREINBERG,
per JEROME KREINBERG
(Sgd.) WM. A. KRASNY,
Copartners doing business as
Kreinberg and Krasny.

Kreinberg and Krasny, Inc., hereby accepts the foregoing assignment, and in consideration of the consent of the Railroad hereon and read hereby agrees to be bound by all and singular of the terms, conditions, provisions, limitations, and agreements, including the provisions relating to the liability of the parties, that are contained in the aforesaid agree-

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ment.

KREINBERG AND KRASNY, INC.,
By (Sgd.) JEROME KREINBERG, *Sec.*

The New York Central Railroad Company, lessee of The C. C. C. & St. L. Ry. Co., hereby consents to and approves the foregoing assignment and acceptance thereof.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of The C. C. C. & St. L. Ry. Co.,
By (Sgd.) F. F. RIEPEL,
Asst. Vice Pres. & Gen. Mgr.

New York Central Form Approved
(Sgd.) W. N. KING, *Rep.*
EJG.
Description Approved ———.
Terms and Conditions Approved ———.

588 *Exhibit No. 17*

(Sheet 1 of 21 sheets.)

This Exhibit contains:

(a) Sidetrack Agreement dated October 1st, 1937, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, Earl C. Gibbs, Inc., and The Cleveland Union Stock Yards Company.

(b) Application and Consent dated March 16th, 1939, permitting use of sidetrack by Hansel Packing Company consented to by The Cleveland Union Stock Yards Company.

(c) Application and Consent dated November 4th, 1939, permitting use of sidetrack by Hygrade Food Products Corporation.

(d) Mutual Consent Form dated May 7th, 1940, terminating the Application and Consent dated March 16th, 1939, wherein the Hansel Packing Company was permitted to use said track.

(e) Application and Consent dated September 10th, 1942, permitting use of sidetrack by Cleveland Provision Company.

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PRIVATE SIDETRACK AGREEMENT

This agreement made this 1st day of October 1937, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway (hereinafter called the Railroad Company), party of the first part, and Earl C. Gibbs, Inc., of the City of Cleveland, County of Cuyahoga, State of Ohio (hereinafter called the Industry), party of the second part, and The Cleveland Union Stock Yards Company, party of the third part, witnesseth:

Whereas, the Industry has applied to the Railroad Company for a sidetrack connection with the Railroad Company's line of railroad in the City of Cleveland, County of Cuyahoga, and State of Ohio.

Now therefore, in consideration of the covenants and agreements herein contained, and the mutual benefits to be derived thereunder, the parties hereto agree that the said sidetrack (shall be) (has been) constructed and shall be maintained subject to the following terms and conditions:

First. The term "track" as used herein includes all track, roadbed, bridges, and other supporting structures or appurtenances used directly in connection therewith, shown in red, green, and yellow colors on blue print No. C-6959-K3, dated September 23, 1937 hereto attached and made a part of this agreement. The

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track (shall be) (has been) constructed and the same shall be owned and maintained by the parties hereto as follows:

(a) The Industry shall, without cost to the Railroad Company, provide the necessary right of way for the portion of the track extending beyond the Railroad Company's premises, and procure and maintain in effect all grants, licenses, franchises, or permits necessary for the construction, maintenance, and operation of the track, in, upon, or across any public road, street, or other property or reservation which may be traversed or intersected thereby, and assume the obligations imposed in or by reason of such grants, licenses, franchises, or permits, or hereafter imposed by law or other public authority in respect thereof including all taxes, assessments and license fees, policing and the erection, maintenance, and operation of any crossing gates or other warnings or protection, and indemnify and hold harmless the Railroad Company from any and all cost and expense in connection therewith.

* * * * *

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(d) The Industry may, at its own expense, construct over or under said track, hoppers, pits, or other loading or unloading devices, and when constructed they shall come under the provisions of this agreement, and all the terms and conditions thereof applying to the track shall apply with equal force to said hoppers, pits, or other loading or unloading devices except pipe lines which are covered by separate agreement.

(e) The Industry shall submit to the Railroad Company detail plans of hoppers, pits, or other loading or unloading devices, and the construction thereof shall not be commenced until said plans have been approved by the Railroad Company.

(f) The Industry shall, at its own expense, keep that part of the said track beyond the clearance point clear of ice, snow, and refuse for a distance of eight and one-half feet on both sides of the center line of said track.

(g) If the Industry fails to maintain in safe condition, in the judgment of the Railroad Company, the part of the track which it is required to maintain, the Railroad Company may discontinue the track or refuse to operate over the same when

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not in such condition.

That part of said track lettered AB and DE colored red on said plan shall be maintained by the Railroad Company at its sole cost and expense. The ownership of said track AB and DE shall vest in the Railroad Company.

That part of said track lettered EF colored yellow on said plan shall be maintained by the Railroad Company and the Railroad Company shall bill against the Industry for the entire expense thereof, which said bills the Industry hereby agrees to pay upon presentation.

That part of said track lettered FGHJ, GK, and HL colored yellow on said plan, including a car stop at point K and a patent bumper at point L as shown on said plan, shall be maintained by the Industry at its sole cost and expense and to the entire satisfaction of the Chief Engineer of the Railroad Company or his duly authorized representative, but the Railroad Company hereby expressly disclaims any obligation to inspect said track FGHJ, GK, and HL, or said car stop and patent bumper. The ownership of the track lettered EF, FGHJ, GK, and HL, including said car stop and patent bumper, shall vest in the Industry.

Any special safety appliances, ticklers, or warning signs ordered installed by The Public Utilities Commission of Ohio because of scant clearances shall be installed by the Industry at its sole cost and expense.

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The gates in the location as shown on said plain shall be maintained by the Industry at its sole cost and expense.

The Industry shall open and close said gates at all times whenever the Railroad Company has occasion to operate over said track.

Second. No casinghead gasoline shall be handled on said track without special permission. Other volatile liquids may be handled, provided the Industry complies with the regulations contained in AKA Circulars Nos. 2084–B and ES–3, or any regulations amendatory thereof or supplemental thereto, or provides, at its own expense, such safeguards and protective devices as may be necessary to prevent the occurrence of any loss, damage, or injury by reason of the inflammable or combustible nature of the substance handled. The Railroad Company will, if it finds the same necessary, install and maintain, at its own expense, insulated rail joints separating said track from all connecting tracks.

Third. In the event that the Railroad Company shall furnish material or labor herein undertaken to be furnished by the Industry, the Industry shall and will pay to the Railroad Company, promptly upon rendition of bills, the entire cost thereof, including unemployment, retirement, and other pay roll taxes, and the Railroad Company's current percentage charge to cover the expense of superintendences, supervision, and use of tools, handling and storing of material, workmen's

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compensation liability insurance, and acounting. Material

and labor so furnished shall remain the property of the Railroad Company until such payment is made, and if such payment shall be in default beyond the period of thirty (30) days after bill is rendered, the Railroad Company, in addition to all other remedies, may discontinue all operations over and remove said tracks. The Railroad Company may, at its option, before furnishing such material or labor, require the Industry to advance to the Railroad Company the estimated cost thereof, which advance shall be adjusted to actual cost upon completion of the work.

Fourth. The Industry shall keep said track clear of obstructions, and shall not place or allow any temporary or permanent structures or obstructions of any kind within the space of eight and one-half feet on either side of the center line of said track, or within the space of twenty-one feet above the said track (being the standard clearance for structures of the Railroad Company), except as to the clearances, if any, less than standard shown upon said blueprint; Provided, however, That no wire or cable line of any kind shall be placed or allowed within such further space on either side or above the said track as shall be determined by the Railroad Company in each particular case.

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All clearances less than standard shown on said blueprint shall be protected by standard warning guards or signs placed in a manner and located satisfactorily to the duly authorized representative of the Railroad Company. The expense of installing and maintaining such guards or signs shall be borne by the Industry. If the structures or obstructions at said points are changed or removed, the clearance at said points shall then be made not less than standard.

The Industry shall assume and indemnify and hold harmless the Railroad Company for and from any and all liability, loss and expense (including Workmen's Compensation), resulting from loss of life or damage or injury to persons or property (including employees of either of the parties hereto), arising in whole or in part by reason of or in any way resulting from the presence or maintenance of structures or obstructions encroaching upon the aforesaid standard clearances or from the presence of wire or cable lines over or adjacent to said track other than structures or obstructions, wire or cable lines belonging to the Railroad Company or its licensees.

Fifth. The Railroad Company may use the part of said track on its premises and may connect such part with other tracks, and after obtaining the specific written consent of the Industry, may use the part of said track on the premises

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of the Industry and may connect the same with other tracks,

for the operation of its railroad or the use of third parties, provided such use or connection shall not interfere unreasonably with the use of the track, which is the subject of this agreement, for the business of the Industry. In the event of such use or connection to serve other patrons of the Railroad Company, or as a connection with other tracks owned or used by the Railroad Company, there shall be a reduction in the Industry's expense of maintenance and an adjustment of its original outlay, as to the part of said track so used, to be determined by the character and extent of such use.

The Industry agrees not to extend such part of said track as may be on premises owned, controlled, or occupied by the Industry or to connect it with any other track, or permit the use thereof by anyone not a party hereto without first obtaining the written consent of the Railroad Company. In the event of the use thereof by anyone not a party hereto, with such written consent but without entering into a written agreement with the Railroad Company, the Industry shall be responsible for the entire maintenance of such extensions thereto or connection therewith, and shall indemnify the Railroad Company against all liability for loss of life or damage or injury to persons or property by reason of or resulting from such use by others as if the Industry were the sole user.

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SIXTH. The Industry assumes all responsibility for and shall indemnify and hold harmless the Railroad Company from and against loss or damage to property of the Industry or to property upon the premises of the Industry or upon said track regardless of the Railroad Company's negligence, arising from fire caused by locomotives operated by the Railroad Company for the purpose of serving said Industry, except to the premises of the Railroad Company and the rolling stock belonging to the Railroad Company or to third parties and to shipments then in the common carrier custody of the Railroad Company.

In respect of all loss or damage to property, other than by fire caused as aforesaid, or in respect of injury to or death of persons caused by or in connection with the construction, operation, maintenance, use, presence, or removal of said track (a) the Railroad Company shall assume responsibility for and hold the Industry harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Railroad Company, its agents or employees; (b) the parties hereto shall equally bear all losses, damages, claims, and judgments arising from or growing out of the joint or concurring actionable acts or omissions of both parties hereto, their respective agents or em-

ployees; and (c) the Industry shall assume the responsibility for and save the Railroad Company harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Industry, its agents or employees.

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SEVENTH. If at any time or times hereafter the Railroad Company makes any changes in the location or elevation of its line of railroad at the point of connection with said track, the Industry shall, at its own expense, make such changes in the portion of the track to be constructed and maintained by it as may be necessry to accommodate the changes to be made by the Railroad Company.

If the Railroad Company shall, at any time, equip its railroad for operation by electricity, the Railroad Company may install and maintain third rail or overhead trolley and other appurtenances for electrified operation on said track, and the Industry shall reimburse the Railroad Company for the cost of such installation and maintenance beyond the clearance point.

EIGHTH. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect, except that whatever liability may have accrued to either party as against the other, prior to the date of termination hereof, shall continue to remain in force. Such notice on the part of the Railroad Company may be given, at its option, by posting it upon or near said track, and this agreement in such case shall terminate thirty (30) days after such posting. Within thirty days after the termination as aforesaid of this agreement either party may remove from the premises of the other all property belonging to it under this agreement and all property not so removed from the premises of the other

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within that time shall belong to the party upon whose premises the property remains.

Ninth. The provisions hereof shall apply to and govern all changes in grade or location which may be made in said track and all extensions or additions thereto.

The agreement dated July 27th, 1933, between the Railroad Company as first party and The Cleveland Provision Company, predecessor to the Industry, as second party, relating to a part of said track, shall be and the same hereby is terminated. (36990).

Tenth. This agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto, except that the Industry shall not assign this contract or any rights hereunder without first obtaining the written consent of the Railroad Company.

In witness whereof, the parties hereto have duly executed this agreement in triplicate the day and year first above written.

THE NEW YORK CENTRAL
RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati,
Chicago and St. Louis Railway.
By F. S. RISLEY [LS],
Asst. Vice Pres. & Genl. Manager.
EARL C. GIBBS, INC.,
By EARL C. GIBBS [LS], *Pres.*

Form Approved:
W. N. KING.
Description Approved:
R. O. ROTE.
Terms and Conditions Approved:
C. M. WILLIAMS.
H. W. F.

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The Cleveland Union Stock Yards Company hereby consents to the use of that part of said track lettered BCD colored green on said plan by the Railroad Company for the purpose of serving Earl C. Gibbs, Inc. Such use shall, as between the Railroad Company and The Cleveland Union Stock Yards Company, be without charge against the Railroad Company save and except the cost of maintaining ~~such~~ track but in all other respects such use shall be without prejudice to the rights of The Cleveland Union Stock Yards Company, the Railroad Company, or Earl C. Gibbs, Inc., under any and all previous agreements, contracts, or other legal documents between The New York Central Railroad Company or its predecessor in interest or between the Cleveland Union Stock Yards Company and Earl C. Gibbs, Inc., or their predecessor in title, all such rights being expressly reserved by the parties hereto. The Cleveland Union Stock Yards Company reserves the right to cancel this consent upon not less than thirty (30) days' notice in writing.

THE CLEVELAND UNION STOCK
YARDS COMPANY,
By (Sgd.) A. Z. BAKER. [LS]
R. W.

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APPLICATION AND CONSENT

CLEVELAND, OHIO, *March 16th, 1939.*

Earl C. Gibbs, Inc., Second Party to an agreement dated October 1st, 1937, with The New York Central Railroad Company, Lessee

of the C. C. C. & St. L. Ry., covering sidetracks at Cleveland, Ohio, located as shown on plan No. C-6959-K3 dated Sept. 23, 1937, which said plan is attached to the aforesaid agreement and made a part thereof, hereby makes application for permission to allow the use of said tracks by Hansol Packing Company.

In consideration of the granting of this application, the undersigned agrees that for the purpose of fixing liability, the premises, property, agents, and employes of said Hansol Packing Company shall be regarded as that of the undersigned, which hereby assumes all liability for loss, damages, or injuries to persons or property resulting from the use of said tracks arising while either it or the said Hansol Packing Company is being served, to the same extent as liability is now assumed by the undersigned in the aforesaid agreement.

This permission shall be subject to the termination at any time by either party hereto giving to the other not less than ten (10) days written notice, whereupon at the time named in said notice, or upon the termination of the

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aforesaid agreement, this permission shall fully cease and determine.

EARL C. GIBBS, INC.,
By ELMER DIETRICH,
Secretary.

The New York Central Railroad Company, Lessee of the C. C. C. & St. L. Ry., hereby grants the foregoing application and consents to the use of said tracks by Hansol Packing Company upon the terms and conditions on said application set forth.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the C. C. C. & St. L. Ry.,
By A. E. LLOYD,
Assistant General Manager.

New York Central Form Approved.
W. N. KING.
Description Approved———.
Terms and Conditions Approved———.
C. H. J.

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The Cleveland Union Stock Yards Company hereby consents to the use of sidetracks covered by the agreement between The New York Central Railroad Company, Earl C. Gibbs, Inc., and The Cleveland Union Stock Yards Company dated October 1st, 1937, by The New York Central Railroad Company, for the

purpose of serving the Hansol Packing Company and other tenants of Earl C. Gibbs, Inc., under the terms, conditions, and restrictions in respect to shipments to and from Earl C. Gibbs, Inc., contained in said agreement.

Dated March 16th, 1939.

THE CLEVELAND UNION STOCK YARDS CO.,
(Sgd.) A. Z. BAKER, *President.*

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APPLICATION AND CONSENT

CLEVELAND, OHIO, *November 4th, 1939.*

Earl C. Gibbs, Inc., Second Party to an agreement dated October 1st, 1937, with The New York Central Railroad Company, Lessee of the C. C. C. & St. L. Ry., covering side tracks at Cleveland, Ohio, located as shown on plan No. C-6959-K3 dated Sept. 22, 1937, which said plan is attached to the aforesaid agreement and made a part thereof, hereby makes application for permission to allow the use of said track by Hygrade Food Products Corporation.

In consideration of the granting of this application, the undersigned agrees that for the purpose of fixing liability, the premises, property, agents, and employes of said Hygrade Food Products Corporation shall be regarded as that of the undersigned, which hereby assumes all liability for loss, damages, or injuries to persons or property resulting from the use of said track arising while either it or the said Hygrade Food Products Corporation is being served, to the same extent as liability is now assumed by the undersigned in the aforesaid agreement.

This permission shall be subject to termination at any time by either party hereto giving to the other not less than ten (10) days' written notice, whereupon at the time named in said notice, or upon the termination of the

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aforesaid agreement, this permission shall fully cease and determine.

EARL C. GIBBS, INC.,
EARL C. GIBBS, *Vice Pres.*

The New York Central Railroad Company, Lessee of the C. C. C. & St. L. Ry. hereby grants the foregoing application and consents to the use of said track by Hygrade Food Products Corpo-

ration upon the terms and conditions on said application set forth.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the C. C. C. & St. L. Ry.,
By A. E. LLOYD.

New York Central Form Approved.
W. E. KING.
G. H. J..
W.

Description Approved ———.
Terms and Conditions Approved ———.

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CLEVELAND, OHIO, *May 7th 1940.*

By mutual consent of the Parties, the application and consent dated March 16th, 1939, wherein the Hansol Packing Company is permitted to use certain side tracks at Cleveland, Ohio, which are the subject of an agreement dated October 1st, 1937, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, as first party, and Earl C. Gibbs, Inc., as second party, shall be and the same hereby is terminated.

In witness whereof, the parties hereto have executed this instrument in duplicate as of the day and year first above written.

THE NEW YORK CENTRAL RAILROAD COMPANY.
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company.
By A. E. LLOYD,
Assistant General Manager.
EARL C. GIBBS, INC.,
By EARL C. GIBBS, *Pres.*

Approved as to Form
W. N. KING, *General Attorney,*
New York Central R. R. Co.

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APPLICATION AND CONSENT

CLEVELAND, O., *September 10, 1942.*

Earl C. Gibbs, Inc., Second Party to an agreement dated October 1st, 1937, with The New York Central Railroad Company, lessee of the C. C. C. & St. L. Ry. Co., covering side tracks at

Cleveland, Ohio, located as shown on plan No. C-6959-K3 dated Sept. 23rd, 1937, which said plan is attached to the aforesaid agreement and made a part thereof, hereby makes application for permission to allow the use of said tracks by Cleveland Provision Company.

In consideration of the granting of this application, the undersigned agrees that for the purpose of fixing liability, the premises, property, agents, and employes of said Cleveland Provision Company shall be regarded as that of the undersigned, which hereby assumes all liability for loss, damages, or injuries to persons or property resulting from the use of said tracks arising while either it or the said Cleveland Provision Company is being served, to the same extent as liability is now assumed by the undersigned in the aforesaid agreement.

This permission shall be subject to termination at any time by either party hereto giving to the other not less than ten (10) days written notice, whereupon at the time named in said notice, or upon the termination of the aforesaid

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agreement, this permission shall fully cease and determine.

EARL C. GIBBS, INC.,
By (Sgd.) EARL C. GIBBS, *Vice Pres.*

The New York Central Railroad Company, lessee of the C. C. C. & St. L. Ry. Co., hereby grants the foregoing application and consents to the use of said tracks by Cleveland Provision Company upon the terms and conditions on said application set forth.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the C. C. C. & St. L. Ry. Co.,
By (Sgd.) A. E. LLOYD,
Assistant General Manager.

New York Central Form Approved
(Sgd.) W. N. KING.
Description Approved ———.
Terms and Conditions Approved ———.

C. H. J.

609 *Exhibit No. 18*

(Sheet 1 of 8 sheets.) (Registry No. 56313-A.)

Exhibit contains: Agreement dated November 25, 1916, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company and Swift and Company.

610 (Sheet 2 of 8 sheets.)

This Agreement, made as of the twenty-fifth (25th) day of November, in the year 1916, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, and Swift and Company, a corporation, as Second Party, witnesseth:

Whereas, the First Party owns a sidetrack at Cleveland, Cuyahoga County, Ohio, on First Party's Cleveland Division, as shown by solid red line upon blueprint hereto attached and made part hereof. Said sidetrack is connected with First Party's sidetrack on the west side thereof extending northwardly about four hundred and eighty-seven (487) feet of which about ninety-seven (97) feet are on land owned or controlled by the First Party, about one hundred and sixty (160) feet on land owned or controlled by the Blumenstock-Reid Company and about two hundred and thirty (230) feet on land owned or controlled by the Second Party. A portion of said sidetrack was constructed pursuant to agreements dated October 27th, 1910, and May 25th, 1912, between the First Party hereto and Henry C. Thom, doing business under the name of the Peoples Packing Company, a predecessor of the Second Party hereto, and

Whereas, the Second Party desires the construction of an eighty (80) foot extension on the north end of said sidetrack

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upon the property of the Second Party, as shown by a solid yellow line on said blueprint, and

Whereas, the Second Party desires the construction of two sidetracks numbered one (1) and two (2), as shown by solid yellow lines on said blueprint. Said sidetrack number one (1) is to be connected with First Party's sidetrack on the southeast side thereof extending northeast and northwardly about seven hundred and seventy (770) feet of which about one hundred and four (104) feet shall be on the land owned or controlled by the First Party, about eighty-four (84) feet on the land of the Second Party west of West Sixty-third Street, about one hundred and seventy-eight (178) feet in and across West Sixty-third Street and about four hundred and four (404) feet on the land of the Second Party east of West Sixty-third Street; said sidetrack number two (2) is to be connected with said sidetrack number one (1) on the east side thereof extending northwardly about four hundred and four

(404) feet on the land of the Second Party east of West Sixty-third Street.

Now, therefore, in consideration of One Dollar ($1.00) the receipt of which is hereby acknowledged, and of benefits to the Second Party, it is agreed between the parties hereto as follows:

1. That the First Party will construct said sidetrack extension and said sidetracks as above indicated, upon the fol-

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lowing terms and conditions:

(a) Before the commencement of work by the First Party the Second Party shall pay to the First Party the estimated cost of the material for the track extension superstructures and the labor of laying same and the estimated cost, on a pro rata per foot of track basis, of the material for the track superstructure and the labor of laying same for that portion of said tracks numbers one and two (1 and 2) to be located upon Second Party's property east of the east line of West Sixty-third Street and upon completion of the work the difference between the actual cost and the estimated cost, as herein provided, shall be paid by the Second Party to the First Party, or, returned by the First Party to the Second Party, as the case may be.

(b) The Second Party shall, at its own expense, construct the roadway, necessary waterways, and waterway structures for said track extension and for said tracks numbers one and two (1 and 2) including the material for and rearranging of the street paving, to the satisfaction and approval of the First Party.

(c) The First Party shall furnish the material for the superstructure of said tracks numbers one and two (1 and 2) and said track extension and the labor of laying all of same.

2. That said existing sidetrack, said extension and said tracks numbers one and two (1 and 2), shall be maintained by the First Party and the Second Party shall, upon presentation of

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bill therefor, pay to the First Party the cost of maintaining said track extension and also that portion of said tracks numbers one and two (1 and 2) owned by the Second Party and located on its land east of the east line of West Sixty-third Street.

3. That the ownership and control of said existing sidetrack, as shown by solid red line on said blueprint, and the southwesterly three hundred and sixty-six (366) feet of said track number one (1) located on the land of the First Party, on land of the Second Party west of the east line of West Sixty-third Street and in and across West Sixty-third Street shall be vested solely in the First Party; that the ownership and control of said sidetrack extension and that portion of said sidetracks numbers one and two (1 and 2) located on the land of the Second Party east of the east line of

West Sixty-third Street shall be vested solely in the Second Party. The First Party shall have the right to use, without cost, the whole or any part of said sidings in connection with other business than that of the Second Party.

4. That the Second Party, without the written consent of the First Party, will not direct or authorize the use of said tracks or extension by or for the benefit of any other party not one of the parties hereto. In the event of the Second Party sells or leases its said track extension or that portion of said sidetracks numbers one and two (1 and 2) located on its land east of the east line of West Sixty-third Street, or sells or leases the

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premises served by any of said sidetracks or extension, the grantee or lessee shall acquire no interest in the tracks of the First Party, or right to service upon any of said tracks or extension until he shall have contracted in writing with the First Party for such interest or such service.

5. That it shall be the duty of the Second Party, in moving any car placed upon said tracks or extension to avoid fouling or obstructing the main or other tracks of the First Party. It shall also be the duty of the Second Party to keep said tracks and extension free from any obstructions which may endanger First Party's employes in discharging their duties as trainmen. It shall also be the duty of the Second Party, when First Party is moving any car or cars upon said tracks or extension to keep its employes and persons upon the premises having business with it, from occupying or being upon or near any car on said tracks or extension. For the failure to perform any such duty, said Second Party does hereby assume liability and indemnifies and saves harmless the First Party. The Second Party does also assume all liability for obstructions of any street, highway or alley by said tracks or from the uses thereof.

6. That the First Party, its successors and assigns, shall have the right at any time after sixty (60) days' notice in writing to the Second Party to discontinue use of said tracks and extension and remove all of the same belonging to the First

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Party, and to enter upon the property of the Second Party for the purpose of removing so much of said sidetracks belonging to the First Party as may be located thereon, the First Party in such case to commit no unnecessary injury to the property of the Second Party.

7. That the Second Party reserves the right to have removed at any time upon sixty (60) days' notice in writing to the First Party, so much of said tracks and extension located on land of said Second

Party, the ownership of which is vested in said First Party or said Second Party.

8. The Second Party hereby indemnifies and agrees to save harmless the First Party from any loss, damage, or injury by fire originating in or from the use of said tracks and extension or any connecting track and affecting the property or person of anyone upon the premises served by said tracks and extension. Also from any loss, damage, or injury by fire originating upon the premises served by said tracks and extension from any negligence of the Second Party, and communicated directly or indirectly to property or persons upon other premises.

9. The Second Party shall, at its own expense, secure from the proper officers of Cleveland, Ohio, authority for the construction, maintenance operation over and removal of that portion of track number one (1) in and across West Sixty-third Street.

10. This agreement shall supersede the said agreement
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of October 27th, 1910, and May 25th, 1912.

In testimony whereof the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

THE CLEVELAND CINCINNATI CHICAGO AND SAINT LOUIS RAILWAY COMPANY.
By (Sgd.) H. A. WORCESTER.
Vice President & General Manager.

Witnesses:
(Sgd.) W. H. GIBSON.
(Sgd.) RUTH H. MILLER.

Approved:
(Sgd.) C. A. PAQUETTE.
Chief Engineer.
(Sgd.) L. J. H.

[SEAL]

SWIFT AND COMPANY,
By (Sgd.) LOUIS F. SWIFT,
President.

Attest:
(Sgd.) C. A. PEACOCK, *Assistant Secretary*

O K (Sgd.) M. C. M.
(Sgd.) R. C. M.
(Sgd.) H. W. T.
(Sgd.) G. L. H.
(Sgd.) H. C. B.
(Sgd.) ——— ———.

618 *Exhibit No. 19*

(Sheet 1 of 4 sheets. Registry No. 2778.)

This agreement, Made as of the twenty-seventh day of October in the year 1910, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation existing under and by virtue of the laws of the States of Ohio and Indiana, as First Party and Henry C. Thom, doing business under the firm name of the Peoples Packing Company of Cleveland, Ohio, as Second Party, witnesseth:

Whereas, the Second Party desires the construction of a sidetrack at West 63rd Street (Prim Street) Cleveland, Cuyahoga County, Ohio, on the Cleveland Division of The Cleveland, Cincinnati, Chicago & Saint Louis Railway Company, as shown on the blueprint hereto attached, which is made a part of this agreement.

Said sidetrack to be connected with the Prim Street siding of the Division aforesaid, on the west side thereof extending northwardly about two hundred fifty-eight (258) feet of which about eighty-six (86) feet shall be on the land of First Party, and about one hundred and seventy-two (172) feet on land owned and controlled by the Second Party.

Now, therefore, in consideration of one dollar, the receipt of which is hereby acknowledged, and of benefits to the Second Party it is agreed between the parties.

(1) That the First Party will construct said sidetrack as above

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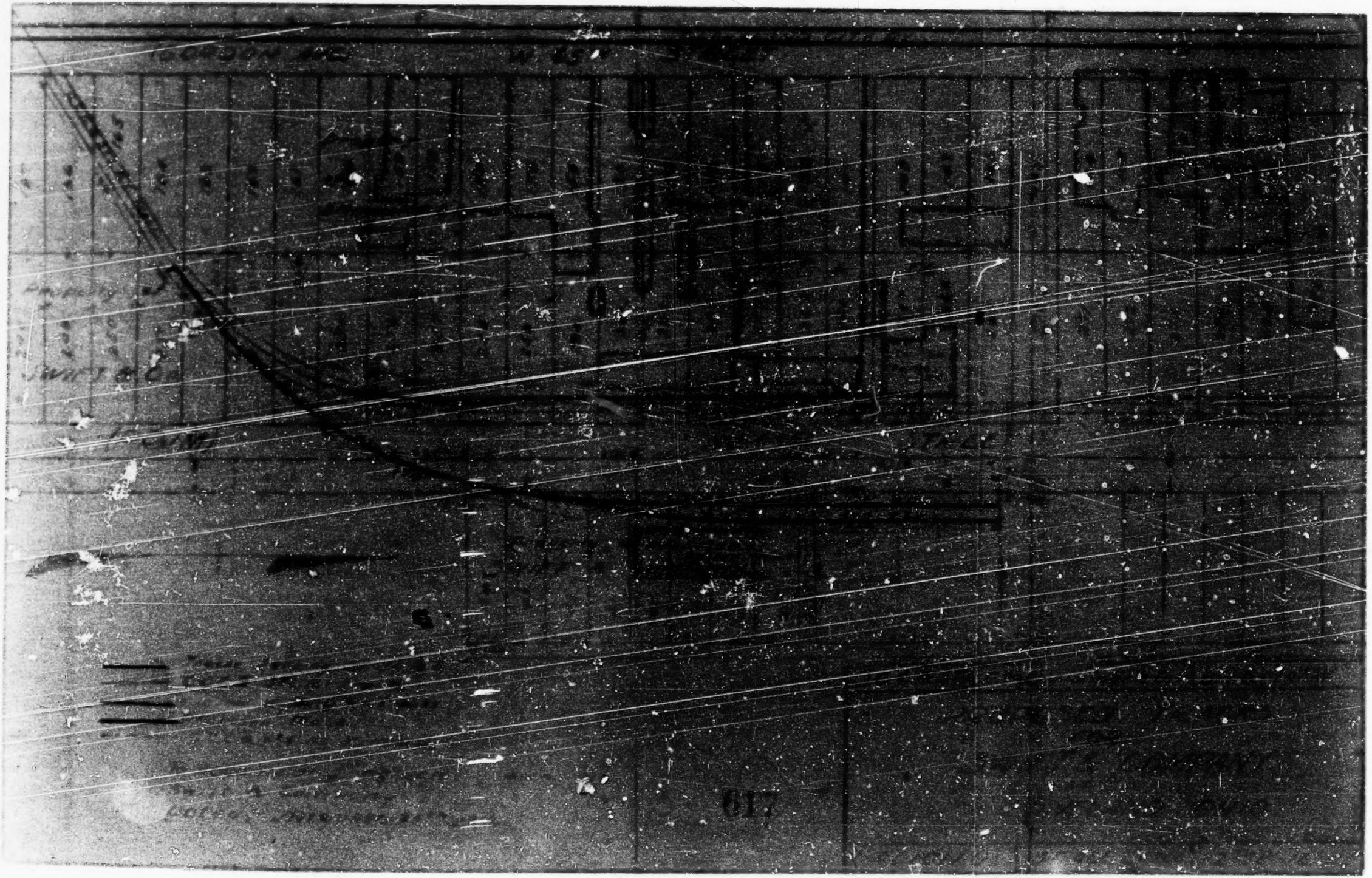
indicated, upon the following terms and conditions:

"A." The First Party shall, at its own expense, construct the roadway and necessary waterway for said track and furnish all the material for the track superstructure and lay the same.

"B." The Second Party shall give to the First Party all its in- and out-bound freight business which it can control provided First Party gives rates equal to those of its competitors.

(2) That said side track shall be maintained by the First Party, and the cost thereof shall be borne by the First Party.

(3) That the ownership and control of said track shall be vested solely in the First Party, and Second Party hereby disclaims ownership in any portion of said side track. The First Party shall have the right to use, without cost, the whole or any part of said siding in connection with other business than that of the Second Party, when such use of the siding will not interfere with the business of the Second Party.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(4) That the Second Party or its assigns without the written consent of the First Party, will not direct or authorize the use of said track by or for the benefit of any other party not one of the parties hereto.

(5) That it shall be the duty of the Second Party, in moving any car placed upon said track, to avoid fouling or obstructing the main or other tracks of the First Party. It shall also be the duty of the Second Party to keep said track free from any obstructions which may endanger First Party's employes in dis-

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charging their duties as trainmen. It shall also be the duty of the Second Party, when First Party is moving any car or cars upon said track to keep its employees and persons upon the premises having business with it, from occupying or being upon or near any car on said track. For the failure to perform any such duty, said Second Party does hereby assume liability and indemnifies and saves harmless the First Party. The Second Party does also assume all liability for obstructions of any street, highway or alley by said track or from the uses thereof.

(6) That the First Party, its successors and assigns, shall have the right at any time after sixty (60) days' notice in writing to the Second Party to discontinue use of said track and remove all of the same belonging to the First Party and to enter upon the property of the Second Party for the purpose of removing so much of said side track belonging to the First Party as may be located thereon, the First Party in such case to commit no unnecessary injury to the property of the Second Party.

(7) That the Second Party reserves the right to have removed at any time upon sixty (60) days' notice in writing to the First Party, so much of said track located on land of said Second Party ownership of which is vested in said First Party.

(8) That with full knowledge of the difficulty of preventing the emission of sparks and fire from engines and trains it is expressly stipulated, agreed, and understood that as a part of

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the consideration for the execution of this agreement, the Second Party is to assume all risk of fires and the danger thereof to any property or structure of said Second Party on account of the use of said side track, to save harmless the First Party from all liability for damage by fire, to any such property or structure which in the operation of First Party's road may accidentally or negligently be communicated to any such property or structure, anything in any law of the State of Ohio to the contrary notwithstanding.

In testimony whereof, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY CO.,
By (Signed) J. Q. VAN WINKLE.
General Manager.

Approved:

G. H. SMITH,
Chief Engineer.
L. J. H.

Witnesses:
A. R. F.
F. A. WALKER.
A. F. EVANS.
E. R. BONNELL.

PEOPLES PACKING COMPANY,
By (Signed) H. C. THOM.
Witnesses:
A. KATZ (?).

Inscribed on back: #2778 Original Agreement Between the CCC & St. L. Rwy. Co. and Peoples Packing Co., October 27, 1910. Siding at Cleveland, O. Superseded by # 4278 dated Nov. 25, 1916, with Swift & Co.

622 *Exhibit No. 20*

(Sheet 1 of 6 sheets.)

This Exhibit contains Side Track Agreement dated May 25, 1912, between The Cleveland, Cincinnati, Chicago and St. Louis Railway Company and Henry C. Thom, doing business as Peoples Packing Company.

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Contract # 2778–A

This agreement, made as of the twenty-fifth (25th) day of May, in the year 1912, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation existing under and by virtue of the laws of the States of Ohio and Indiana, as First Party, and Henry C. Thom, doing business under the firm name of the Peoples Packing Company of Cleveland, Ohio, as Second party, witnesseth:

Whereas, the Second Party desires the extension and rearrangement of a sidetrack at West Sixty-third Street (Prim Street) Cleveland, Cuyahoga County, Ohio, on the Cleveland Division

of The Cleveland Cincinnati, Chicago and Saint Louis Railway Company, as shown on the blue print hereto attached, which is made a part of this agreement. Said side track to be connected with the existing side track serving the Peoples Packing Company of the Division aforesaid, on the south side thereof extending southwardly about one hundred and eight (108) feet to a connection with the proposed track to serve Blumenstock Reid Company, all on land owned and controlled by the Second Party.

Now, therefore, in consideration of one dollar ($1.00), the receipt of which is hereby acknowledged, and of benefits to the Second Party it is agreed between the parties:

1. That the First Party will construct said sidetrack as above indicated upon the following terms and conditions:

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A. The First Party shall, at its own expense, construct the roadway and necessary waterway for said rearrangement and extension of sidetrack, furnish all the material for the track superstructure and lay the same.

B. The Second Party shall give to the First Party all its in- and out-bound freight business which it can control provided First Party gives rates equal to those of its competitors.

2. That said sidetrack shall be maintained by the First Party, and the cost thereof shall be borne by the First Party.

3. That the ownership and control of said track shall be vested solely in the First Party and Second Party hereby disclaims ownership in any portion of said sidetrack. The First Party shall have the right to use, without cost, the whole or any part of said siding in connection with other business than that of the Second Party, when such use of the siding will not interfere with the business of the Second Party.

4. That the Second Party, or its assigns, without the written consent of the First Party, will not direct or authorize the use of said track by or for the benefit of any other party not one of the parties hereto.

5. That it shall be the duty of the Second Party, in moving any car placed upon said track, to avoid fouling or

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obstructing the main or other tracks of the First Party. It shall also be the duty of the Second Party to keep said track free from any obstructions which may endanger First Party's employes in discharging their duties as trainmen. It shall also be the duty of the Second Party, when First Party is moving any car or cars upon said track to keep its employees and persons upon the premises having business with it, from occupying or being upon or near any car on said track. For the failure to perform any such duty, said Second Party does hereby assume liability and

indemnifies and saves harmless the First Party. The Second Party does also assume all liability for obstructions of any street, highway or alley by said track or from the uses thereof.

6. That the First Party, its successors and assigns, shall have the right at any time after sixty (60) days' notice in writing to the Second Party to discontinue u ' of said track and remove all of the same belonging to the First Party and to enter upon the property of the Second Party for the purpose of removing so much of said sidetrack belonging to the First Party as may be located thereon, the First Party in such case to commit no unnecessary injury to the property of the Second Party.

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7. That the Second Party reserves the right to have removed at any time upon sixty (60) days' notice in writing to the First Party, so much of said track located on land of said Second Party the ownership of which is vested in said First Party.

8. That with full knowledge of the difficulty of preventing the emission of sparks and fire from engines and trains it is expressing stipulated, agreed and understood, that as a part of the consideration for the execution of this agreement, the Second Party is to assume all risk of fires and the danger thereof to any property or structure of said Second Party on account of the use of said sidetrack, to save harmless the First Party from all liability for damage by fire, to any such property or structure which in the operation of First Party's road may accidentally or negligently be communicated to any such property or structure, anything in any law of the State of Ohio to the contrary notwithstanding.

In testimony whereof, the parties hereto have caused this agreement to be executed in duplicate the day and year first

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above written.

THE CLEVELAND CINCINNATI CHICAGO AND SAINT LOUIS RAILWAY COMPANY.

By (Sgd.) J. D. VAN WINKLE,

PEOPLES PACKING COMPANY.

By H. C. THOM.

Witnesses:

J. C. KIRBY.

E. MEYER

Approved: L. J. H.

R. G. M.

T. G. S.

Witnesses:

R. D. BROWN.

H. W. QUIGLEY.

628 *Exhibit No. 21*

(Sheet 1 of 7 sheets.)

This Exhibit contains Side Track Agreement between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company and Federal Packing Company, dated March 28, 1927; and Letter dated May 5, 1931, indicating agreement of March 28, 1927, superseded by agreement dated Nov. 24, 1930.

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SIDE TRACK AGREEMENT

(Existing Track)

Contract #7523

This Agreement, made and executed in duplicate this Twenty-eighth (28) day of March, 1927, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, and The Federal Packing Company, a corporation under the laws of the State of Ohio, as Second Party, said First Party being hereinafter called the "Railroad," and said Second Party being hereinafter called the "Industry," witnesseth:

Whereas, the Industry has been using and desires to continue to use an existing sidetrack known as Valuation No. 243 connected with the Railroad's line of railroad at Cleveland, Cuyahoga County, Ohio, and it is mutually desired to enter into a formal agreement to cover the ownership, maintenance and use of said track by said Industry.

Now, therefore, it is mutually covenanted and agreed:

First. Said track, as shown in red color on the blueprint hereto attached, dated Feb. 23, 1927, revised Feb. 25, 1927, and made a part of this agreement, shall be owned by the Railroad.

Second. The Industry shall, without expense to the Railroad, obtain all licenses, franchises, or privileges, if any are necessary, for the maintenance and operation of the track in, upon or across any public road, street, or other public property or reservation which may be traversed or intersected

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thereby, and the necessary right-of-way for the portion of the track extending beyond the Railroad right-of-way; and the Industry shall assume all of the obligations imposed in such licenses, franchises, or privileges and shall indemnify and hereby agrees to save harmless the Railroad from any and all of the ob-

ligations imposed in said licenses, franchises, or privileges, or any expense in connection therewith or incident thereto, and from any and all obligations hereafter imposed by public officers, or by law, and any expense in connection therewith or incident thereto, including policing and crossing protection for that portion of said track in, upon or across such public highway or property which may be traversed or intersected thereby.

Third. The Industry shall, on the part of itself and its officers, agents, and employes, keep said track clear of obstructions and shall not place or allow any temporary or permanent structure or other obstruction of any kind to be placed by its officers, agents, or employes, within the space of twenty-two (22) feet above the said track or within seven and a half (7½) feet on either side of the center line of said track.

Fourth. The Railroad shall have the right to cease, forthwith and without notice, all operations upon said track, if compelled so to do by the owners, other than the respective parties hereto, of any portion of said track, or of the land

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upon which said track, or any portion thereof, may be laid.

Fifth. Except only as the parties hereto shall in writing stipulate otherwise, all provisions herein as to the aforementioned track shall apply to any and all additions thereto and/or extensions thereof, and to any and all additions to or extensions of said track of the Railroad; and maps or prints, approved by the parties hereto, showing such additions and/or extensions may, at the option of the Railroad, be by it annexed hereunto or to its original hereof and shall thereby become and be a part of this agreement.

Sixth. The Railroad may use the said track for general railroad purposes and expressly reserves the right to connect such part of said track as may be on its premises with other tracks for its own use or that of third parties.

The Industry agrees not to extend such part of said track as may be on the premises owned, controlled, or occupied by the Industry, or to connect same with any other track, or permit the use thereof by anyone not a party hereto, without first obtaining the written consent of the Railroad.

Seventh. It is understood that the movement of Railroad's locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad's negligence, arising from fire caused by locomotives operated

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by the Railroad on said track, or in the vicinity thereof for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage or injury from any act or omission of the Industry, its employes or agents, to the person or property of the parties hereto and their employes, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

The term "Railroad" under this Article shall include the tenants and licensees of First Party.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect; such notice on the part of the Railroad may, at its option, be given by posting it upon a conspicuous part of the premises, and this agreement, in such case shall terminate thirty (30) days after such posting; after which period either party may remove all property belonging to it under this agreement, except as herein otherwise provided.

Until terminated as above provided, this agreement shall

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inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that, as to the Industry, no assignment of this agreement shall be valid without the written consent of the Railroad.

Ninth. It is understood and agreed that this contract shall apply to all portions of the track shown on the blueprints attached as hereinbefore provided, which may have been constructed under this or any other agreement or otherwise prior to the making of this contract, which portions shall be and become subject to all of its terms applicable subsequent to construction, as fully as though originally constructed, maintained, and operated hereunder.

In witness whereof, the parties hereto have duly executed this agreement in duplicate this 28th day of March, 1927.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY.

By C. S. MILLARD, *General Manager.*

THE FEDERAL PACKING COMPANY,

By F. C. THORNTON, *President.*

Approved:
H. N. QUIGLEY,
General Counsel.
HADLEY BALDWIN,
Chief Engineer.
J. D. B.
W. H. SULLIVAN,
Gen. Supt. C. T. D.
Attest:
[SEAL] A. V. CUNNING, *Secretary.*

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CINCINNATI, O., *May 5, 1931.*

Subject: Contract #7523.
Mr. J. E. ANDERSON, *Traffic Manager.*

Please refer to contract #7323, dated March 28, 1927, with Federl Packing Co., covering use of an existing sidetrack at Cleveland, O.

Chief Engineer Baldwin advises that contract of November 24, 1930, with this company, our number 8726, supersedes the above mentioned agreement, and I will thank you to mark your records accordingly.

(Signed) R. F. DAVIES,
Assistant General Auditor.

LPW–r.
cc—Industrial Dept. Sup't. Cleve-Ind'pls Div. Gen. Supt. Sullivan, Cleve. O. Supt. Bell, Cleve. O. CCA Brunks. Auditor of Disb.

635 *Exhibit No. 22*

(Sheet 1 of 7 sheets.)

This Exhibit contains Side Track Agreement dated Nov. 24, 1930, between The New York Central Railroad Company and the Federal Packing Company; and

Assignment by the Federal Packing Company to Swift & Co., April 2, 1938.

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SIDETRACK AGREEMENT

(Existing Track)

This Agreement, made this twenty-fourth (24) day of November 1930, between The New York Central Railroad Company, Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, a corporation, as First Party, and the Federal Packing Company

a corporation under the laws of the state of Ohio, as Second Party, said First Party being hereinafter called the "Railroad," and said Second Party being hereinafter called the "Industry," witnesseth:

Whereas the Industry desires and has requested the Railroad for permission to use a portion of an existing sidetrack known as Val. No. 243 connected with the Railroad's line of railroad at Cleveland, Cuyahoga County, Ohio, such portion of track being hereinafter referred to as "track".

Now, therefore, it is mutually covenanted and agreed:

First. Said track, as hown in red color on the blueprint hereto attached, dated November 18, 1930, and made a part of this agreement, shall be owned by said First Party's Lessor.

Second. The Industry shall, without expense to the Railroad, obtain all licenses, franchises, or privileges, if any are necessary, for the maintenance and operation of the track in, upon or across any public road, street, or other public

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property or reservation which may be traversed or intersected thereby, and the necessary right-of-way for the portion of the track extending beyond the Railroad right-of-way; and the Industry shall assume all of the obligations imposed in such licenses, franchises, or privileges and shall indemnify and hereby agrees to save harmless the Railroad from any and all of the obligations imposed in said licenses, franchises, or privileges, or any expense in connection therewith or incident thereto, and from any and all obligations hereafter imposed by public officers, or by law, and any expense in connection therewith or incident thereto, including policing and crossing protection for that portion of said track in, upon or across such public highway or property which may be traversed or intersected thereby.

Third. The Industry shall, on the part of itself, and its officers, agents, and employes, keep said track clear of obstructions and hereafter shall not place or allow any temporary or permanent structure or other obstruction of any kind to be placed by its officers, agents, or employes, within the space of twenty-two (22) feet above the said track or within eight and one-half (8½) feet on either side of the center line of said track.

Fourth. The Railroad shall have the right to cease forthwith and without notice, all operations upon said track, if compelled so to do by the owners, other than the respective

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parties hereto, of any portion of said track, or of the land upon which said track, or any portion thereof, may be laid.

Fifth. Except only as the parties hereto shall in writing otherwise stipulate, all provisions hereof as to the aforesaid track shall

apply to any and all additions thereto and/or extensions thereof, and to any and all additions to or extensions of said track of the Railroad; and maps or prints, approved by the parties hereto, showing such additions and/or extensions may, at the option of the Railroad, be by it annexed hereunto or to its original hereof and shall thereby become and be a part of this agreement.

Sixth. The Railroad may use the said track for general railroad purposes and expressly reserves the right to connect such part of said track as may be on its premises with other tracks for its own use or that of third parties.

The Industry agrees not to extend such part of said track as may be on the premises owned, controlled, or occupied by the Industry, or to connect same with any other track, or permit the use thereof by anyone not a party hereto without first obtaining the written consent of the Railroad.

Seventh. It is understood that the movement of Railroad's locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad's negligence,

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arising from fire caused by locomotives operated by the Railroad on said track, or in the vicinity thereof for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employes or agents, to the person or property of the parties hereto and their employes, and to the person or property of any other person or corporation; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

The term "Railroad" under this Article shall include the tenants and licensees of said First Party.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect; such notice on the part of the Railroad may, at its option, be given by posting it upon a conspicuous part of the premises, and this agreement, in such case, shall terminate thirty (30) days after such posting; after which period either party may remove all property belonging to it under this agreement.

Until terminated as above provided, this agreement shall inure to the benefit of and be binding upon the

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successors, assigns, and/or lessees of the parties hereto; provided, however, that, as to the Industry, no assignment of this agreement shall be valid without the written consent of the Railroad.

Ninth. It is understood and agreed that this contract shall apply to all portions of the track shown on the blueprints attached as hereinbefore provided, which may have been constructed under this or any other agreement or otherwise prior to the making of this contract, which portions shall be and become subject to all of its terms applicable subsequent to construction, as fully as though originally constructed, maintained, and operated hereunder.

In witness whereof, the parties hereto have duly executed this agreement in duplicate the day and year first above written.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By (Sgd.) C. S. MILLARD, *General Manager.*

THE FEDERAL PACKING COMPANY,

[SEAL]

By (Sgd.) GEORGE J. STEWART, *Vice President.*
(Sgd.) HADLEY BALDWIN, *Chief Engineer.*
(Sgd.) W. H. SULLIVAN, *General Supt.*
(Sgd.) J. D. BELL, *Superintendent.*

As to form:
(Sgd.) H. H. QUIGLEY,
(Sgd.) A. F. M. *General Counsel.*

Attest: (?).
(Sgd.) J. E. CORBY, *Secretary.*

Approved as to form:
R. C. M. (Sgd.) H. S.
(Sgd.) H. W. T.
J. J. H. (Sgd.) T. J. E. W. (Sgd.) S.
(Sgd.) H. C. T.
R. G. H. (Sgd.) R.
(Sgd.) F. F. F.

641 (Sheet 7 of 7 sheets.)

For Value Received, The Federal Packing Company, an Ohio corporation, hereby assigns and transfers to Swift and Company, an Illinois corporation, all right, title, and interest in and to that certain track agreement dated November 24, 1930, between The New York Central Railroad Company and The Federal Packing Company, providing for the operation and maintenance of a

sidetrack near West 63rd Street in the City of Cleveland, County of Cuyahoga, State of Ohio.

In consideration whereof, said Swift and Company hereby agrees to observe and perform all covenants and conditions of said agreement to be performed by said The Federal Packing Company from and after the date hereof.

In witness whereof, the parties have caused these presents to be executed by their duly authorized officers, this 2nd day of April 1938.

THE FEDERAL PACKING COOMPANY,
[SEAL] By GEORGE J. STEWART,
Vice President.

SWIFT AND COMPANY,
By WM. B. TRAYNOR,
Vice President.

R. E. F.

The New York Central Railroad Company (Lessee of The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company) hereby consents to the foregoing assignment.

THE NEW YORK CENTRAL
RAILROAD COMPANY,
By A. E. LLOYD,
Assistant General Manager.

Approved as to Form:
W. H. KING,
General Attorney,
New York Central R. R. Co.
W. H. E.: S.

642 *Exhibit No. 23*

(Registry No. 56286–A

(Sheet 1 of 5 sheets.)

SIDE TRACK AGREEMENT

(Existing Track)

This agreement, made and executed in duplicate this Twenty-eighth (28th) day of March 1927, between the Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, and The Hughes Provision Company, a corporation under the laws of the state of Ohio, as Second Party, said First Party being hereinafter called the "Railroad," and said Second Party being hereinafter called the "Industry," witnesseth:

Whereas the Industry has been using and desires to continue to use an existing side track known as Valuation No. 243 connected with the Railroad's line of railroad at Cleveland, Cuyahoga County, Ohio, and it is mutually desired to enter into a formal agreement to cover the ownership, maintenance and use of said track by said Industry,

Now, therefore, it is mutually covenanted and agreed:

First. Said track, as shown in red color on the blueprint hereto attached, dated March 18th, 1927, and made a part of this agreement, shall be owned by the Railroad.

Second. The Industry shall, without expense to the Railroad,

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obtain all licenses, franchises, or privileges, if any are necessary, for the maintenance and operation of the track in, upon, or across any public road, street, or other public property or reservation which may be traversed or intersected thereby, and the necessary right-of-way for the portion of the track extending beyond the Railroad right-of-way; and the industry shall assume all of the obligations imposed in such licenses, franchises, or privileges and shall indemnify and hereby agrees to save harmless the Railroad from any and all of the obligations imposed in said licenses, franchises, or privileges, or any expense in connection therewith or incident thereto, and from any and all obligations hereafter imposed by public officers, or by law, and any expense in connection therewith or incident thereto, including policing and crossing protection for that portion of said track in, upon or across such public highway or property which may be traversed or intersected thereby.

Third. The Industry shall, on the part of itself and its officers, agents, and employes, keep said track clear of obstructions and shall not place or allow any temporary or permanent structure or other obstruction of any kind to be placed by its officers, agents, or employes, within the space of twenty-two (22) feet above the said track or within seven and a half (7½) feet on either side of the center line of said track.

Fourth. The Railroad shall have the right to cease, forthwith and without notice, all operations upon said track, if

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compelled so to do by the owners, other than the respective parties hereto, of any portion of said track, or of the land upon which said track, or any portion thereof, may be laid.

Fifth. Except only as the parties hereto shall in writing stipulate otherwise, all provisions herein as to the aforementioned track shall apply to any and all additions thereto and/or extensions thereof, and to any and all additions to or extensions of

said track of the Railroad; and maps or prints, approved by the parties hereto, showing such additions and/or extensions, may, at the option of the Railroad, be by it annexed hereunto or to its original hereof and shall thereby become and be a part of this agreement.

Sixth. The Railroad may use the said track for general railroad purposes and expressly reserves the right to connect such part of said track as may be on its premises with other tracks for its own use or that of third parties.

The Industry agrees not to extend such part of said track as may be on the premises owned, controlled, or occupied by the Industry, or to connect same with any other track, or permit the use thereof by anyone not a party hereto without first obtaining the written consent of the Railroad.

Seventh. It is understood that the movement of Railroad's locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to proper-

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ty upon its premises, regardless of Railroad's negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in the vicinity thereof for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employes or agents, to the person or property of the parties hereto and their employes, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

The term "Railroad" under this Article shall include the tenants and licensees of First Party.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect; such notice on the part of the Railroad may, at its option, be given by posting it upon a conspicuous part of the premises, and this agreement, in such case, shall terminate thirty (30) days after such posting; after which period either party may remove all property belonging to it under this agreement, except as herein otherwise provided.

Until terminated as above provided, this agreement shall inure to the benefit of and be binding upon the

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successors and assigns of the parties hereto; provided, however, that, as to the Industry, no assignment of this agreement shall be valid without the written consent of the Railroad.

Ninth. It is understood and agreed that this contract shall apply to all portions of the track shown on the blueprints attached as hereinbefore provided, which may have been constructed under this or any other agreement or otherwise prior to the making of this contract, which portions shall be and become subject to all of its terms applicable subsequent to construction, as fully as though originally constructed, maintained, and operated hereunder.

In witness whereof, the parties hereto have duly executed this agreement in duplicate this 20th day of March 1927.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY.

By (Sgd.) C. S. MILLARD, *General Manager.*

THE HUGHES PROVISION COMPANY,

By (Sgd.) W. HUGHES, *President.*

Approved:

(Sgd.) H. H. QUIGLEY, *General Counsel.*

(Sgd.) HADLEY BALDWIN, *Chief Engineer.*

(Sgd.) W. H. SULLIVAN, *Gen'l Supt.*

C. T. D.

(Sgd.) J. D. B.

Attest:

(Sgd.) J. L. BISTRICKY, *Secretary.*

647 *Exhibit No. 2;*

(Registry No. 56351-A)

(Sheet 1 of 7 sheets.)

Exhibit contains: Side Track Agreement, dated August 1, 1922, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company and Koblenzer Brothers.

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SIDE TRACK AGREEMENT

(Existing Track)

This Agreement, made and executed in duplicate this first (1st) day of August 1922, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, and Christian Koblenzer and Matthias Koblenzer, composing a partnership and doing business under the name of Koblenzer

Brothers, as Second Party, said First Party being hereinafter called the "Railroad," and said Second Party being hereinafter called the "Industry," witnesseth:

Whereas, the Industry desires and has requested the Railroad for permission to use a sidetrack connected with the Railroad's line of railroad in the City of Cleveland, Cuyahoga County, Ohio; relative to a portion of which track said Railroad and The Hartman Provision Company (predecessor company of said Industry hereto), entered into an agreement dated February 28, 1913.

Now, therefore, it is mutually covenanted and agreed:

First. Said track, as shown in red color on the blueprint hereto attached, dated July 20, 1922, and made a part of this
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agreement, shall be owned by said Railroad.

Second. The Industry shall, without expense to the Railroad, obtain all licenses, franchises, or privileges, if any are necessary, for the maintenance and operation of the track in, upon or across any public road, street, or other public property or reservation which may be traversed or intersected thereby, and the necessary right-of-way for the portion of the track extending beyond the Railroad right-of-way; and the industry shall assume all of the obligations imposed in such licenses, franchises, or privileges and shall indemnify and hereby agrees to save harmless the Railroad from any and all of the obligations imposed in said licenses, franchises, or privileges, or any expense in connection therewith or incident thereto, and from any and all obligations hereafter imposed by public officers, or by law, and any expense in connection therewith or incident thereto, including policing and crossing protection for that portion of said track in, upon, or across such public highway or property which may be traversed or intersected thereby.

Third. The Industry shall, on the part of themselves and their officers, agents, and employes, keep said track clear of obstructions and shall not place or allow any temporary or permanent structure or other obstruction of any kind to be placed by their officers, agents, or employes, within the space of twenty-one (21) feet above the said track or within seven
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and one-half (7½) feet on either side of the center line of said track.

Fourth. The Railroad shall have the right to cease, forthwith and without notice, all operations upon said track, if compelled so to do by the owners, other than the respective parties hereto, of any portion of said track, or of the land upon which said track, or any portion thereof, is laid.

Fifth. Except only as the parties hereto shall in writing stipu-

late otherwise, all provisions herein as to the aforementioned track shall apply to any and all additions thereto and/or extensions thereof, and to any and all additions to or extensions of said track of the Railroad; and maps or prints, approved by the parties hereto, showing such additions and/or extensions may, at the option of the Railroad, be by it annexed hereunto or to its original hereof and shall thereby become and be a part of this agreement.

Sixth. The Railroad may use the said track for general railroad purposes and expressly reserves the right to connect such part of said track as may be on its premises with other tracks for its own use or that of third parties.

The Industry agrees not to extend such part of said track as may be on the premises owned, controlled, or occupied by the Industry, or to connect same with any other track, or permit the use thereof by anyone not a party hereto, without first obtaining

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the written consent of the Railroad.

Seventh. It is understood that the movement of Railroad's locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad's negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employes or agents, to the person or property of the parties hereto and their employes, and to the person or property of any other person or corporation, while on or about said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect; such notice on the part of the Railroad may, at its option, be given by posting it upon a conspicuous part of the premises, and this agreement, in such case, shall terminate thirty (30)

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days after such posting; after which period either party may remove all property belonging to it under this agreement, except as herein otherwise provided.

Until terminated as above provided, this agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties hereto; provided, however, that, as to the Industry, no assignment of this agreement shall be valid without the written consent of the Railroad.

Ninth. It is understood and agreed that this contract shall apply to all portions of the track shown on the blueprints attached as hereinbefore provided, which may have been constructed under this or any other agreement or otherwise prior to the making of this contract, which portions shall be and become subject to all of its terms applicable subsequent to construction, as fully as though originally constructed, maintained, and operated hereunder.

Tenth. This agreement shall supersede said agreement of February 28, 1913.

In witness whereof, the parties hereto have fully executed
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this agreement in duplicate this first (1st) day of August 1922.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY,
By (Sgd.) E. M. COSTIN, *General Manager.*
KOBLENZER BROTHERS,
By (Sgd.) MATTH KOBLENZER.
By (Sgd.) CHRIST KOBLENZER.

Approved:
(Sgd.) H. N. QUIGLEY, *General Attorney.*
(Sgd.) C. A. PAQUETTE, *Chief Engineer.*
Approved:
(Sgd.) B. C. B., *General Superintendent.*
O. K. (Sgd.) T. J. H.
(Sgd.) L. S. R.
Witnesses:
(Sgd.) E. GALBRAITH.

654 *Exhibit No. 25*

(Sheet 1 of 4 sheets.)

This agreement, made as of the twenty-seventh (27th) day of November in the year 1916, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party and The Theurer-Norton Provision Company, a corporation, as Second Party, witnesseth:

Whereas pursuant to an agreement between the parties hereto dated June 9th, 1911, the First Party constructed and owns a sidetrack at Cleveland, Cuyrhoga County, Ohio, on First Party's Cleveland Division, and

Whereas the Second Party desires the shifting of the cross-over of one hundred and twenty-three (123) feet as shown by broken red lines to the location shown by a solid yellow line, of which eighty-seven (87) feet shall be on the land of the First Party and thirty-six (36) feet on the land of the Second Party, and also desires the construction of an additional sidetrack of three hundred and seventy (370) feet as shown by a solid yellow line. Said additional track to be connected with First Party's Prim Street sidetrack on the east side thereof extending northwardly about three hundred and seventy (370) feet of which sixty (60) feet shall be on land of the First Party and about three hundred and ten (310) feet in and along West Sixty-third Street, and

Whereas the First Party has constructed and owns a sidetrack of about one hundred and sixty-five (165) feet on the land of the Second Party as shown by a solid red line All of said tracks and cross-over being shown upon blue print hereto attached and made part hereof.

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Now, therefore in consideration of One Dollar ($1.00), the receipt of which is hereby acknowledged, and of benefits to the Second Party, it is agreed between the parties:

1. That the First Party shall shift said cross-over and construct the said additional track as above indicated, upon the following terms and conditions:

(a) Before the commencement of work by the First Party, the Second Party shall pay to the First Party the estimated cost of the labor and additional material, including the ballast, necessary for the shifting of said cross-over and the estimated cost of the additional track superstructure and ballast and the labor of laying both of same and upon completion of the work the difference between the actual cost and the estimated cost shall be paid by the Second Party, to the First Party, or, returned by the First Party to the Second Party, as the case may be.

(b) The Second Party shall, at its own expense, construct the roadway, necessary waterways, and waterway structures and rearrange the street paving for said additional track and cross-over to the satisfaction and approval of the First Party.

(c) The First Party shall furnish the additional material and labor for and shift said cross-over and furnish the material for the superstructure for the additional track, including ballast, bumping post, and the labor for laying and placing same.

2. That said existing side track and cross-over shall be maintained by the First Party at its own expense. The Second Party shall, at its own expense maintain said additional track and street paving and it hereby agrees to indemnify and save harmless the First Party from all liability for damage, injury, or expense during

the use of or resulting from the failure to maintain said additional track and street paving.

3. That the ownership and control of said existing side track and cross-over is and shall be vested solely in the First Party and the ownership and control of said additional sidetrack shall be vested solely in the Second Party. The First Party shall have the right to use, without cost, the whole or any part of its said sidetrack and cross-over in connection with other business than that of the Second Party. The

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First Party shall have the right to use, without cost, the whole or any part of Second Party's said additional sidetrack in connection with other business than that of the Second Party when such use will not materially retard the use thereof by or for the Second Party.

4. That the Second Party, without the written consent of the First Party, will not direct or authorize the use of said tracks and cross-over by or for the benefit of any other party not one of the parties hereto. In the event the Second Party sells or leases its said additional sidetrack or sells or leases the premises served by said additional track or cross-over the grantee or lessee shall acquire no interest in the said existing track or cross-over of the First Party or right to service upon any of said sidetracks and cross-over until he shall have contracted in writing with the First Party for such interest or such service.

5. That it shall be the duty of the Second Party, in moving any car placed upon said tracks and cross-over, to avoid fouling or obstructing the main or other tracks of the First Party. It shall also be the duty of the Second Party to keep said tracks and cross-over free from any obstructions which may endanger First Party's employes in discharging their duties as trainmen. It shall also be the duty of the Second Party, when First Party is moving any car or cars upon said tracks and cross-over to keep its employes and persons upon the premises having business with it, from occupying or being upon or near any car on said tracks and cross-over. For the failure to perform any such duty, said Second Party does hereby assume liability and indemnifies and saves harmless the First Party. The Second Party does also assume all liability for obstructions of any street, highway, or alley by said tracks and cross-over or from the uses thereof.

6. That the First Party, its successors and assigns, shall have the right at any time after sixty (60) days' notice in writing to the Second Party to discontinue use of said tracks and cross-over and remove all of the same belonging to the First Party, and to enter upon the property of the Second Party for the purpose of removing so much of said sidetracks and cross-over belonging to

the First Party as may be located thereon, the First Party in such case to commit no unnecessary injury to the property of the Second Party. The First Party shall also have the right upon said notice to remove Second Party's turnout in said additional track connecting with First Party's track and the Second Party shall, upon presentation of bill therefor, pay to the First Party the cost of removing said turnout.

7. That the Second Party reserves the right to have removed at any time upon sixty (60) days' notice in writing to the First Party, so much of said tracks and cross-over located on land of said Second Party, the ownership of which is vested in said First Party and to remove its said additional track.

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8. The Second Party hereby indemnifies and agrees to save harmless the First Party from any loss, damage, or injury by fire originating in or from the use of said tracks and cross-over or any connecting track and affecting the property or person of anyone upon the premises served by said tracks and cross-over. Also from any loss, damage, or injury by fire originating upon the premises served by said tracks and cross-over from any negligence of the Second Party, and communicated directly or indirectly to property or persons upon other premises.

9. The Second Party shall, at its own expense, secure from the proper officers of Cleveland, Ohio, authority for rearranging said cross-over and for the construction, maintenance, operation over, and removal of said additional sidetrack in and along West Sixty-third Street. The Second Party hereby agrees to assume the obligations imposed upon the First Party by the City of Cleveland in its permission for the construction of said additional sidetrack and the Second Party further agrees to indemnify and save harmless the First Party from any expense whatsoever, because of or incident thereto.

10. This agreement shall supersede the said agreement of June 9th, 1911.

In testimony whereof, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY,

By (Sgd.) H. A. WORCESTER,
Vice President & General Manager.

THE THEURER-NORTON PROVISION COMPANY,

[SEAL] By (Sgd.) JOHN THEURER, *President.*

Witnesses:
(Sgd.) W. H. GIBSON.
(Sgd.) RUTH H. MILLER.

Approved:
(Sgd.) C. A. PAQUETTE, *Chief Engineer.*
(Sgd.) L. J. H.
Attest:
(Sgd.) M. G. TEUFEL, *Secretary.*

658 *Exhibit No. 26*

(Sheet 1 of 4 sheets.)

CONTRACT No. 4231

C. C. C. & ST. L. RY. CO.

THEURER-NORTON PROVISION CO.

SWIFT & CO.

Construction of an extension to Swift & Co.'s track No. 1 at W. 63rd St., Cleveland, Ohio

MARCH 15, 1917.

This agreement, made as of the fifteenth (15th) day of March in the year 1917, between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, The Theurer-Norton Provision Company, a corporation, as Second Party, and Swift and Company, a corporation, as Third Party, witnesseth:

Whereas the Second Party desires the construction of a side track extension at Cleveland, Cuyahoga County, Ohio, on its Cleveland Division, as shown by a solid yellow line upon blueprint hereto attached and made part hereof. Said track extension is to be connected on the north end with a proposed track numbered One (1) for the Third Party, extending northwardly four hundred and twenty (420) feet on the property of the Second Party.

Now, therefore, in consideration of One Dollar ($1.00), the receipt of which is hereby acknowledged and of benefits to the Second Party, it is agreed between the parties:

1. That the First Party will construct said track extension as above indicated upon the following terms and conditions:

(a) Before the commencement of work by the First Party,

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the Second Party shall pay to the First Party the estimated cost of the track extension superstructure, including cinders, and the labor of laying and placing all of same, and upon completion of the work the difference between the actual cost and the esti-

mated cost shall be paid by the Second Party to the First Party, or returned by the First Party to the Second Party, as the case may be.

(b) The Second Party shall, at its own expense, construct the roadway, necessary waterways and waterway structures for said track extension to the satisfaction and approval of the First Party.

(c) The First Party shall furnish the material for the track extension superstructure, including cinders, and the labor of laying and placing all of same.

2. That said extension superstructure shall be maintained by the First Party, and the cost thereof shall be borne by the Second Party. The roadway, necessary waterways, and waterway structures shall be maintained by the Second Party at its own expense and it agrees to indemnify and save harmless the First Party from all liability for damage, injury, or expense during the use of or resulting from the failure to properly maintain said roadway, necessary waterways, and waterway structures.

3. That the ownership and control of said track extension shall be vested solely in the Second Party. The First Party shall have the right to use, without cost, the whole or any part of said extension in connection with other business than that of the Second Party, when such use will not materially retard the use thereof by or for the Second Party.

4. That the Second Party, without the written consent of the First Party, will not direct or authorize the use of said track extension by or for the benefit of any other party not one of the parties hereto. In the event the Second Party sells or leases said track extension or the premises served by same, the grantee or lessee or any other party shall acquire no right to service upon said track extension until he shall have contracted in writing with the First Party for such service.

5. That it shall be the duty of the Second Party, in moving any car placed upon said track extension, to avoid fouling or obstructing any connecting track of the First Party. It shall also be the duty of the Second Party to keep said track extension free from any obstructions which may endanger First Party's employes in discharging their duties as trainees.

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It shall also be the duty of the Second Party, when First Party is moving any car or cars upon said track extension to keep its employes and persons upon the premises having business with it, from occupying or being upon or near any car on said track extension. For the failure to perform any such duty, said Second Party does hereby assume liability and indemnifies and serves harmless the First Party.

6. That the First Party, its successors and assigns, shall have the right at any time after sixty (60) days' notice in writing to the Second Party to discontinue use of said track extension. In the event that the First Party is prohibited the use of that portion of track numbered One (1) owned by the Third Party, the First Party shall, without prior notice to the Second Party, have the right to discontinue the use of said track extension.

7. That the Second Party reserves the right to have removed at any time upon sixty (60) days' notice in writing to the First Party said track extension.

8. That the Second Party hereby indemnifies and agrees to save harmless the First Party from any loss, damage, or injury by fire originating in or from the use of said track extension or any connecting track and affecting the property or person of anyone upon the premises of the Second Party served by same. Also from any loss, damage, or injury by fire originating in or from the use of said track extension or any connecting track by or for the Second Party and affecting the property or person of anyone upon the premises served by said connecting track. Also from any loss, damage, or injury by fire originating upon the premises served by said track extension and connecting track from any negligence of the Second Party, and communicated directly or indirectly to property or persons upon other premises.

9. It is agreed that the First Party shall be and is hereby indemnified and protected against all claims for rental on account of the use of the Third Party's said track by or for the Second Party.

10. The Third Party hereby consents to the construction, maintenance, operation over and removal of said track extension in accordance with the conditions above mentioned.

In testimony whereof, the parties hereby have caused this agreement to be executed in triplicate the day and year first above written.

661 (Sheet 4 of 4 sheets.)

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY,
By H. A. WORCESTER,
Vice President and General Manager.
THE THEURER-NORTON PROVISION COMPANY,
By JOHN THEURER, *President.*
SWIFT AND COMPANY,
By L. F. SWIFT, *President.*
R. C. M.
H. N. T.

Witnesses:
W. M. GIBSON.
RUTH K. MILLER.

Approved:
C. A. PAQUETTE, *Chief Engineer.*
L. J. H.
Attest:
[SEAL] M. C. TEUFEL, *Secretary.*
Attest:
[SEAL] C. A. PEACOCK, *Asst. Secretary.*

662 *Exhibit No. 27*

(Registry No. 37377)

(Sheet 1 of 12 sheets.)
Exhibit contains: Side Track Agreement dated January 22, 1934, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, and Theurer-Norton Provision Company.

663 (Sheet 2 of 12 sheets.)

PRIVATE SIDETRACK AGREEMENT

This Agreement, made this 22nd day of January 1924, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway (hereinafter called the Railroad Company), party of the first part, and Theurer-Norton Provision Company, of the City of Cleveland, County of Cuyahoga, State of Ohio (hereinafter called the Industry), party of the second part, witnesseth:

Whereas the Industry has applied to the Railroad Company for a sidetrack connection with the Railroad Company's line of railroad in the City of Cleveland, County of Cuyahoga, and State of Ohio.

Now therefore, in consideration of the covenents and agreements herein contained, and the mutual benefits to be derived thereunder, the parties hereto agree that the said sidetrack shall be maintained subject to the following terms and conditions:

First. The term "track" as used herein includes all track, roadbed, bridges, and other supporting structures or appurtenances used directly in connection therewith, shown in red and yellow.

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colors on blueprint No. C-6199-K2, dated April 27, 1933, Rev. 1-8-34 hereto attached and made a part of this agreement. The track shall be owned, and the cost of maintaining the same, shall be borne by the parties hereto as follows:

(a) The Industry shall, without cost to the Railroad Company, provide the necessary right-of-way for the portion of the track

extending beyond the Railroad Company's premises, and procure and maintain in effect all grants, licenses, franchises, or permits necessary for the construction, maintenance, and operation of the track, in, upon, or across any public road, street, or other property or reservation which may be traversed or intersected thereby, and assume the obligations imposed in or by reason of such grants, licenses, franchises, or permits, or hereafter imposed by law or other public authority in respect thereof including all taxes, assessments and license fees, policing, and the erection, maintenance, and operation of any crossing gates or other warnings or protection, and indemnify and hold harmless the Railroad Company from any and all cost and expense in connection therewith.

* * * * * *

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(d) The Industry may, at its own expense, construct over or under said track, hoppers, pits, or other loading or unloading devices, and when constructed they shall come under the provisions of this agreement, and all the terms and conditions thereof applying to the track shall apply with equal force to said hoppers, pits, or other loading or unloading devices except pipe lines which are covered by separate agreement.

(e) The Industry shall submit to the Railroad Company detail plans of hoppers, pits, or other loading or unloading devices, and the construction thereof shall not be commenced until said plans have been approved by the Railroad Company.

(f) The Industry shall, at its own expense, keep said track lettered (copy illegible) clear of ice, snow, and refuse for a distance of eight and

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one-half feet on both sides of the center line of said track.

(g) If the Industry fails to maintain in safe condition, in the judgment of the Railroad Company, the part of the track which it is required to maintain, the Railroad Company may disconnect the track or refuse to operate over the same when not in such condition.

That part of said tracks colored red on said plan have heretofore been constructed and are owned and shall be maintained by the Railroad Company at its sole cost and expense.

That part of said tracks colored yellow on said plan, including a patent bumping post in the location as indicated by the letter D on said plan, have heretofore been constructed and are owned and shall be maintained by the Industry at its sole cost and expense and to the entire satisfaction of the Chief Engineer of the Railroad Company.

That part of said tracks to be owned and maintained by the

Railroad Company has been constructed prior to the issuance of General Order No. 15.

The patent bumping post in the location as indicated by the letter B on said plan has heretofore been constructed and is owned and shall be maintained by the Railroad Company at its sole cost and expense.

Second. No casinghead gasoline shall be handled on said track without special permission. Other volatile liquids may be

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handled provided the Industry complies with the regulations contained in ARA Circulars Nos. 2084–B and ES–3, or any regulations amendatory thereof or supplemental thereto, or provides, at its own expense, such safeguards and protective devices as may be necessary to prevent the occurrence of any loss, damage, or injury by reason of the inflammable or combustible nature of the substances handled. The Railroad Company will, if it finds the same necessary, install and maintain, at its own expense, insulated rail joints separating said track from all connecting tracks.

Third. In the event that the Railroad Company shall furnish material or labor herein undertaken to be furnished by the Industry, the Industry shall and will pay to the Railroad Company, promptly upon rendition of bills, the entire cost thereof, inclusive of the Railroad Company's usual percentage charge to cover the expense of superintendence, supervision, and use of tools, handling and storing of material, workmen's compensation and liability insurance, and accounting. Material and labor so furnished shall remain the property of the Railroad Company until such payment is made, and if such payment shall be in default beyond the period of thirty (30) days after bill is rendered, the Railroad Company, in addition to all other remedies may discontinue all operations over and remove said tracks. The Railroad Company may, at its option, before furnishing such material

or

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labor, require the Industry to advance to the Railroad Company the estimated cost thereof, which advance shall be adjusted to actual cost upon completion of the work.

Fourth. The Industry shall keep said track clear of obstructions, and shall not place or allow any temporary or permanent structures or obstructions of any kind within the space of eight and one-half feet on either side of the center line of said track, or within the space of twenty-one feet above the said track (being the standard clearance for structures of the Railroad Company), except as to the clearances, if any, less than standard shown upon said blueprint; provided, however, that no wire or cable line of

any kind shall be placed or allowed within such further space on either side or above the said track as shall be determined by the Railroad Company in each particular case.

All clearances less than standard shown on said blueprint shall be protected by standard warning guards or signs placed in a manner and located satisfactorily to the duly authorized representative of the Railroad Company. The expense of installing and maintaining such guards or signs shall be borne by the Industry. If the structures or obstructions at said points are changed or removed, the clearance at said points shall then be made not less than standard.

The Industry shall assume and indemnify and hold harmless the Railroad Company for and from any and all liability, loss and ex-

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pense (including Workmen's Compensation), resulting from loss of life or damage or injury to persons or property (including employees of either of the parties hereto), arising in whole or in part by reason of or in any way resulting from the presence or maintenance of structures or obstructions encroaching upon the aforesaid standard clearances or from the presence of wire or cable lines over or adjacent to said track other than structures or obstructions, wire or cable lines belonging to the Railroad Company of its licensee.

Fifth. The Railroad Company may use the part of said track on its premises and may connect such part with other tracks, and after obtaining the specific written consent of the Industry, may use the part of said track on the premises of the Industry and may connect the same with other tracks, for the operation of its railroad or the use of third parties, provided such use or connection shall not interfere unreasonably with the use of the track, which is the subject of this agreement, for the business of the Industry. In the event of such use or connection to serve other patrons of the Railroad Company, or as a connection with other tracks owned or used by the Railroad Company, there shall be a reduction in the Industry's expense of maintenance and an adjustment of its original outlay, as to the part of said track so used, to be determined by the character and extent of such use.

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The industry agrees not to extend such part of said track as may be on premises owned, controlled or occupied by the Industry or to connect it with any other track, or permit the use thereof by anyone not a party hereto without first obtaining the written consent of the Railroad Company. In the event of the use thereof by anyone not a party hereto, with such written consent but with-

out entering into a written agreement with the Railroad Company, the Industry shall be responsible for the entire maintenance of such extensions thereto or connection therewith, and shall indemnify the Railroad Company against all liability for loss of life or damage or injury to persons or property by reason of or resulting from such use by others as if the Industry were the sole user.

Sixth. The Industry assumes all responsibility for and shall indemnify and hold harmless the Railroad Company from and against loss or damage to property of the Industry or to property upon the premises of the Industry or upon said track regardless of the Railroad Company's negligence, arising from fire caused by locomotives operated by the Railroad Company for the purpose of serving said Industry, except to the premises of the Railroad Company and the rolling stock belonging to the Railroad Company or to third parties and to shipments then in the common carrier custody of the Railroad Company.

In respect of all loss or damage to property other than by

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fire caused as aforesaid, or in respect of injury to or death of persons caused by or in connection with the construction, operation, maintenance, use, presence, or removal of said track (a) the Railroad Company shall assume responsibility for and hold the Industry harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Railroad Company, its agents or employees; (b) the parties hereto shall equally bear all losses, damages, claims, and judgments arising from or growing out of the joint or concurring actionable acts or omissions of both parties hereto, their respective agents or employees; and (c) the Industry shall assume the responsibility for and save the Railroad Company harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Industry, its agents or employees.

Seventh. If at any time or times hereafter the Railroad Company makes any changes in the location or elevation of its line of railroad at the point of connection with said track, the Industry shall, at its own expense, make such changes in the portion of the track to be constructed and maintained by it as may be necessary to accommodate the changes to be made by the Railroad Company.

If the Railroad Company shall, at any time, equip its railroad for operation by electricity, the Railroad Company may install

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and maintain third rail or overhead trolley and other appurtenances for electrified operation on said track, and the In-

dustry shall reimburse the Railroad Company for the cost of such installation and maintenance beyond the clearance point.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect, except that whatever liability may have accrued to either party as against the other, prior to the date of termination hereof, shall continue to remain in force. Such notice on the part of the Railroad Company may be given, at its option, by posting it upon or near said track, and this agreement in such case shall terminate thirty (30) days after such posting. Within thirty days after the termination as aforesaid of this agreement either party may remove from the premises of the other all property belonging to it under this agreement and all property not so removed from the premises of the other within that time shall belong to the party upon whose premises the property remains.

Ninth. The provisions hereof shall apply to and govern all changes in grade or location which may be made in said track and all extensions or additions thereto.

The certain agreement dated November 27, 1916, between The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (predecessor to the Railroad Company), as first party, and the

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Industry as second party, and relating to certain sidetracks at Cleveland, Ohio, shall be and the same hereby is terminated. (35726.)

Tenth. This agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties hereto, except that the Industry shall not assign this contract or any rights hereunder without first obtaining the written consent of the Railroad Company.

In witness whereof, the parties hereto have duly executed this agreement in duplicate the day and year first above written.

THE NEW YORK CENTRAL RAILROAD COMPANY,
By R. THWAITES, *Asst. General Manager.* [LS]
THEURER-NORTON PROVISION COMPANY,
By M. C. TEUFD, *Pres.* [LS].

Form Approved:
W. N. KING.
Description approved:
R. C. ROTE.
Terms and conditions approved:
H. W. F.
C. M. WILLIAMS.

674 *Exhibit No. 28*

(Registry No. 37978)

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Exhibit contains: Side Track Agreement, dated May 14, 1934, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, Theurer-Norton Provision Company, and Swift & Company.

Supplemental Agreement dated February 19, 1935, between the same parties.

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PRIVATE SIDETRACK AGREEMENT

This Agreement made this 14th day of May 1934, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway (hereinafter called the Railroad Company), party of the first part, and Theurer-Norton Provision Company, of the City of Cleveland, County of Cuyahoga, State of Ohio (hereinafter called the Industry), party of the second part, and Swift & Company, party of the third part, witnesseth:

Whereas the Industry has applied to the Railroad Company for a sidetrack connection with the Railroad Company's line of railroad in the City of Cleveland, County of Cuyahoga, and State of Ohio,

Now therefore, in consideration of the covenants and agreements herein contained, and the mutual benefits to be derived thereunder, the parties hereto agree that the said sidetrack shall be maintained subject to the following terms and conditions:

First. The term "track" as used herein includes all track, roadbed, bridges, and other supporting structures, or appurtenances

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used directly in connection therewith, shown in red and yellow colors on blueprint No. C-6333-U3, dated May 8, 1934, hereto attached and made a part of this agreement. The track shall be owned, and the cost of maintaining the same, shall be borne by the parties hereto as follows:

(a) The Industry shall, without cost to the Railroad Company, provide the necessary right-of-way for the portion of the track extending beyond the Railroad Company's premises, and procure and maintain in effect all grants, licenses, franchises, or permits necessary for the construction, maintenance, and operation of the track, in, upon, or across any public road, street, or other property

or reservation which may be traversed or intersected thereby, and assume the obligations imposed in or by reason of such grants, licenses, franchises, or permits, or hereafter imposed by law or other public authority in respect thereof including all taxes, assessments, and license fees, policing, and the erection, maintenance, and operation of any crossing gates or other warnings or protection, and indemnify and hold harmless the Railroad Company from any and all cost and expense in connection therewith.

* * * * *

(d) The Industry may, at its own expense, construct over or under said track, hoppers, pits, or other loading or unloading devices, and when constructed they shall come under the provisions of this agreement, and all the terms and conditions

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thereof applying to the track shall apply with equal force to said hoppers, pits, or other loading or unloading devices except pipe lines which are covered by separate agreement.

(e) The Industry shall submit to the Railroad Company detail plans of hoppers, pits, or other loading or unloading devices, and the construction thereof shall not be commenced until said plans have been approved by the Railroad Company.

* * * * *

That part of said track lettered ABCDE colored red on said plan has heretofore been constructed and is owned and shall be maintained by the Railroad Company at its sole cost and expense.

That part of said track lettered EF colored green on said plan has heretofore been constructed and the provisions relating to the ownership and maintenance of said track are found in an agreement dated February 1, 1934, between the Railroad Compauy as first party and Swift and Company as second party.

That part of said track lettered FG colored yellow on said plan has heretofore been constructed and is owned by the Industry. The Railroad Company will maintain said track lettered FG and will bill against the Industry for the entire expense thereof, which said bills the Industry hereby agrees to pay upon presentation,

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Second. No casinghead gasoline shall be handled on said track without special permission. Other volatile liquids may be handled, provided the Industry complies with the regulations contained in ARA Circulars Nos. 2084–B and ES–3, or any regulations amendatory thereof or supplemental thereto, or provides, at its own expense, such safeguards and protective devices as may be necessary to prevent the occurrence of any loss, damage, or injury by reason of the inflammable or combustible

nature of the substances handled. The Railroad Company will, if it finds the same necessary, install and maintain, at its own expense, insulated rail joints separating said track from all connecting tracks.

Third. In the event that the Railroad Company shall furnish material or labor herein undertaken to be furnished by the Industry, the Industry shall and will pay to the Railroad Company, promptly upon rendition of bills, the entire cost thereof, inclusive of the Railroad Company's usual percentage charge to cover the expense of superintendence, supervision, and use of tools, handling and storing of material, workmen's compensation and liability insurance, and accounting. Material and labor so furnished shall remain the property of the Railroad Company until such payment is made, and if such payment shall be in default beyond the period of thirty (30) days after bill is

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rendered, the Railroad Company, in addition to all other remedies may discontinue all operations over and remove said tracks. The Railroad Company may, at its option, before furnishing such material or labor, require the Industry to advance to the Railroad Company the estimated cost thereof, which advance shall be adjusted to actual cost upon completion of the work.

Fourth. The Industry shall keep said track clear of obstructions, and shall not place or allow any temporary or permanent structures or obstructions of any kind within the space of eight and one-half feet on either side of the center line of said track, or within the space of twenty-one feet above the said track (being the standard clearance for structures of the Railroad Company), except as to the clearances, if any, less than standard shown upon said blueprint; provided, however, that no wire or cable line of any kind shall be placed or allowed within such further space on either side or above the said track as shall be determined by the Railroad Company in each particular case.

All clearances less than standard shown on said blueprint shall be protected by standard warning guards or signs placed in a manner and located satisfactorily to the duly authorized representative of the Railroad Company. The expense of installing and maintaining such guards or signs shall be borne by the Industry. If the structures or obstructions at said points are changed or removed, the clearance at said points shall then be

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made not less than standard.

The Industry shall assume and indemnify and hold harmless the Railroad Company for and from any and all liability, loss, and expense (including Workmen's Compensation), resulting

from loss of life or damage or injury to persons or property (including employees of either of the parties hereto), arising in whole or in part by reason of or in any way resulting from the presence or maintenance of structures or obstructions encroaching upon the aforesaid standard clearances or from the presence of wire or cable lines over or adjacent to said track other than structures or obstructions, wire or cable lines belonging to the Railroad Company or its licensees.

Fifth. The Railroad Company may use the part of said track on its premises and may connect such part with other tracks, and after obtaining the specific written consent of the Industry, may use the part of said track on the premises of the Industry and may connect the same with other tracks, for the operation of its railroad or the use of third parties, provided such use or connection shall not interfere unreasonably with the use of the track, which is the subject of this agreement, for the business of the Industry. In the event of such use or connection to serve other patrons of the Railroad Company, or as a connection with other tracks owned or used by the Railroad Company, there shall be a reduction in the Industry's expense of maintenance and an adjustment of its original

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outlay, as to the part of said track so used, to be determined by the character and extent of such use.

The Industry agrees not be extend such part of said track as may be on permises owned, controlled, or occupied by the Industry or to connect it with any other track, or permit the use thereof by anyone not a party hereto without first obtaining the written consent of the Railroad Company. In the event of the use thereof by anyone not a party hereto, with such written consent but without entering into a written agreement with the Railroad Company, the Industry shall be responsible for the entire maintenance of such extensions thereto or connection therewith, and shall indemnify the Railroad Company against all liability for loss of life or damage or injury to persons or property by reason of or resulting from such use by others as if the Industry were the sole user.

Sixth. The Industry assumes all responsibility for and shall indemnify and hold harmless the Railroad Company from and against loss or damage to property of the Industry or to property upon the premises of the Industry or upon said track regardless of the Railroad Company's negligence, arising from fire caused by locomotives operated by the Railroad Company for the purpose of serving said Industry, except to the premises of the Railroad Company and the rolling stock belonging to the Railroad Company or to third parties and to shipments then in the common carrier

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custody of the Railroad Company.

In respect of all loss or damage to property, other than by fire caused as aforesaid, or in respect of injury to or death of persons caused by or in connection with the construction, operation, maintenance, use, presence, or removal of said track (a) the Railroad Company shall assume responsibility for and hold the Industry harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Railroad Company, its agents or employees; (b) the parties hereto shall equally bear all losses, damages, claims, and judgments arising from or growing out of the joint or concurring actionable acts or omissions of both parties hereto, their respective agents or employees; and (c) the Industry shall assume the responsibility for and save the Railroad Company harmless from all losses, damages, claims, and judgments arising from or growing out of the sole actionable acts or omissions of the Industry, its agents or employees.

Seventh. If at any time or times hereafter the Railroad Company makes any changes in the location or elevation of its line of railroad at the point of connection with said track, the Industry shall, at its own expense, make such changes in the portion of the track to be constructed and maintained by it as may be necessary to accommodate the changes to be made by the Railroad Company.

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If the Railroad Company shall, at any time, equip its railroad for operation by electricity, the Railroad Company may install and maintain third rail or overhead trolley and other appurtenances for electrified operation on said track, and the Industry shall reimburse the Railroad Company for the cost of such installation and maintenance beyond the clearance point.

Eighth. This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect, except that whatever liability may have accrued to either party as against the other, prior to the date of termination hereof, shall continue to remain in force. Such notice on the part of the Railroad Company may be given, at its option, by posting it upon or near said track, and this agreement in such case shall terminate thirty (30) days after such posting. Within thirty days after the termination as aforesaid of this agreement either party may remove from the premises of the other all property belonging to it under this agreement and all property not so removed from the premises of the other within that time shall belong to the party upon whose premises the property remains.

Ninth. The provisions hereof shall apply to and govern all changes in grade or location which may be made in said track and all extensions or additions thereto.

The certain agreement dated March 15, 1917, between The Cleveland, Cincinnati, Chicago and St. Louis Railway Company
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(predecessor to the Railroad Company), as first party, the Industry as second party, and Swift & Company as third party, and relating to said track, shall be and the same hereby is terminated. (35683.)

Tenth. This agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties hereto, except that the Industry shall not assign this contract or any rights hereunder without first obtaining written consent of the Railroad Company.

In witness whereof, the parties hereto have duly executed this agreement in triplicate the day and year first above written.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinati, Chicago and St. Louis Railway.
By E. THWAITES, *Asst. General Manager.* [LS]
THEURER-NORTON PROVISION COMPANY,
By W. C. TAUPAL, *Pres.* [LS]
Form approved:
W. N. KING.
Description approved:
R. O. ROTE.
Terms and conditions approved:
H. W. F.
C. M. WILLIAMS.

Swift & Company, owner of the track lettered EF colored green on said plan, hereby agrees that the Railroad Company may use said track lettered EF at any time for the operation of its railroad or for other parties, provided such use shall not interfere unreasonably with the use of said track for the business of Swift & Company.

SWIFT & COMPANY,
By JOHN HOLMES, *Vice President.* [LS]
Approved as to form:
SWIFT AND COMPANY,
W. H. SUTTER, *Asst. Secretary.*
E. B. K. V. M. S.
W. A. M. R.
E. W. P.
G. W. C.

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CLEVELAND, OHIO, *February 19, 1935.*

By Mutual Consent of the Parties, the second-last typewritten paragraph on the bottom of the first page of the agreement dated May 14, 1934, between The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, as first party, Theurer-Norton Provision Company as second party, and Swift & Company as third party, and which agreement relates to a side track at Cleveland, Ohio, shall be and the same hereby is modified and amended to read as follows:

That part of said track lettered EF colored green on said plan has heretofore been constructed and the provisions relating to the ownership and maintenance of said track are found in an agreement dated November 25, 1916, between The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (predecessor to the Railroad Company), as first party, and Swift and Company as second party.

This supplemental agreement shall be attached to, become a part of, and terminate with the aforesaid agreement between the parties hereto dated May 14, 1934.

In witness whereof, the parties hereto have executed this supplemental agreement in triplicate by their duly authorized and proper officers as of the day and year first above

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written.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By E. THWAITES, *Asst. General Manager.*

Approved as to form:
W. N. KING, *General Attorney,*
New York Central R. R. Co.
C. M. WILLIAMS,
C. M. W.

THEURER-NORTON PROVISION COMPANY,
By AUG. F. LUCHT, *Secy.*
SWIFT & COMPANY,
By D. W. CREEDEN, *Vice President.*

E. B. K.
G. M. C.
W. A. M. A.

687 *Exhibit No. 29*

(Sheet 1 of 3 sheets.)

ORDINANCE No. 18748-A

An Ordinance granting to the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, its successors and assigns, the right to lay a switch track across West 65th Street.

SECTION 1. Be it ordained by the Council of the City of Cleveland, State of Ohio, that permission, on the conditions hereinafter mentioned, is hereby given to the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, its successors and assigns to lay a switch track across West 65th Street, as shown on a plat attached hereto and marked "Exhibit A" from said Company's tracks on a 16° curve which intersects the center line of said West 65th Street at a point 1,390 ft. south of the intersection of said center line of West 65th Street with the center line of Stock Street as shown by yellow lines on the plat, which plat is referred to herein and is attached to the original copy of this Ordinance.

SECTION 2. That such switch track shall have no frogs or switch points within the limits of the street and shall be laid to the grade of said West 65th Street as now established and paved, and shall be relaid to such grades as may hereafter be established, and shall be planted between the rails and 18 inches outside of each rail; the water from the gutters of said street shall be conveyed under said track in a proper and acceptable manner; or the necessary catch basins shall be constructed and connected with the sewer in said West

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65th Street, as the City Engineer shall direct, at the expense of said Railroad Company and paving displaced shall be relaid outside of track and at the expense of said Railroad Company, and said tracks, gutters and planking shall be kept in constant good repair, and the track properly lighted by or at the expense of said Railroad Company, its successors or assigns, as the Board of Public Service of the City of Cleveland may direct, and to the acceptance of said Board. Said Company shall build, maintain a fence along said track on West 63rd Street satisfactory to the direction of Public Service.

SECTION 3. That the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company, its successors or assigns, hereby obligates itself to at any and all times hold the City harmless from any damage to persons or property or expense of any kind that may arise by reason of said switch track or the permission herein granted; to at all times fully obey any general or special regula-

tions that may now or hereafter be enacted governing or applicable to the said switch track, to waive any and all rights to the contrary and will support or remove said track as may be ordered by the Board of Public Service when necessary for the purpose of making any general improvements in said West 65th Street and at no time to stand cars upon any portion of said West 65th Street or allow the same to be done.

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SECTION 4. That the Council reserves the right to at any and all times revoke this permission and that whenever so revoked the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company agree to remove the track from said West 65th Street and return the street and pavement to the condition required by the Board of Public Service within 30 days after receiving notice of the revocation of this grant; and in case it shall not so remove the same and repair the pavement properly, then the Board of Public Service may cause same to be done at the expense of said Company, its successors or assigns.

SECTION 5. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law, and the filing with the City Clerk of a written acceptance of the terms and conditions hereof by said Cleveland, Cincinnati, Chicago & St. Louis Railway Company and the payment to the City Auditor the expense of printing and advertising the same.

H. F. WALKER, *Pres. of Council.*
P. Y. M'CRAY, *City Clerk.*

Passed Sept. 6, 1910.
Approved by Mayor Sept. 8, 1910.

690 *Exhibit No. 30*

(Sheet 1 of 12 sheets.)

Exhibit contains the following easements:

The Blumenstock & Reid Co. to The C. C. C. & St. L. Ry. Co.

Henry C. Thom et al. to The C. C. C. & St. L. Ry. Co.

Theurer Norton Provision Co. et al. to The C. C. C. & St. L. Ry. Co.

Henry C. Thom et al. to The C. C. C. & St. L. Ry. Co.

The Cleveland Union Stock Yards Company to The C. C. C. & St. L. Ry. Co.

H. C. Thom, et al. to C. C. C. & St. L. Ry. Co.

granting the 16-foot easement required in order to reach and serve the predecessors of present Swift & Company plant located easterly of West 65th Street and westerly of West 63rd Street.

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THE BLUMENSTOCK & REID CO. TO THE C. C. C. & ST. L. RY. CO.

Easement, Dec. 5, 1911, Vol. 1364, Page 635

This Indenture witnesseth, that The Blumenstock & Reid Co., a Corporation, the grantor, in consideration of the benefits accruing to it by reason thereof, does for itself, its successors and assigns, to the extent of its ownership in the property hereinafter described, grant unto The C. C. C. & St. L. Ry. Co. a corporation, the grantee, its successors and assigns, an easement for the construction, operation, and maintenance of a railroad track over the following described real estate in Cuyahoga County, in the State of Ohio, to wit:

Being parts of Lots 255 and 256, and 257, of Julia A. Sargent's Allotment of part of Original Lot 34, in the City of Cleveland, Brooklyn Township, Cuyahoga County, Ohio, and being more particularly described as follows:

A strip of ground 16 feet in width and extending from the south line of Lot 255 to the north line of Lot 257 and being 8 feet on each side of the following-described center line; from the intersection of the southeast line of Stock St. SW. with the east line of 65th St. SW. measure southwardly 1,349.6 feet along the east line of 65th St. SW.; to a point where said center line produced, intersects the last named street line; thence deflecting 122°20′ to the left, measure northeastwardly 167 feet; thence tangent thereto along a curve to the left (the radius of which curve is 301.64 feet) measure northeastwardly 18′ to a point where said

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Center line intersects the south line of said lot 255 for the place of beginning; thence continuing along said curve measure 122.4 feet; containing 0.025 of an acre more or less.

To Have and To Hold the said easement in said land unto The C. C. C. & St. L. Ry. Co. its successors and assigns, for construction, maintenance, and operation of said railroad track. The easement herein granted shall terminate whenever said Railway Company, its successors and assigns, shall cease to use said land for the purposes therein set forth.

In witness whereof, the said The Blumenstock & Reid Co. has caused its corporate name and seal to be hereunto affixed by its President and the same to be attested by its Secretary, this 5th day of December 1911.

THE BLUMENSTOCK & REID CO.

By (Signed) GEORGE BLUMENSTOCK, *Pres.*

Attest:

(Signed) THOMAS REID, *Sec.*

693 (Sheet 4 of 12 Sheets.)

HENRY C. THOM ET AL. TO THE C. C. C. & ST. L. RY. CO.

Easement, March 19, 1908, Vol. 1144, Page 534

We, Henry C. Thom and Julia G. Thom, his wife, in consideration of the benefits and privileges accruing to us by reason thereof, do each severally for ourselves, our heirs and assigns, to the extent of the ownership of us or either of us in the property hereinafter described, hereby grant unto The C. C. C. & St. L. Ry. Co., its successors and assigns, an easement for the construction, operation and maintenance of a railroad track in and over the following described property, to wit:

Being a strip of land 16 feet in width, off the easterly side of sublots Nos. 285 to 255, inclusive, of Julia A. Sargent's Allotment of part of Original Brooklyn Township Lot No. 34, as recorded in Vol. 23, page 26 of the Records of Maps of Cuyahoga County, Ohio, and also for the construction, maintenance, and operation of a track upon and over the street upon which said lots abut.

To Have and To Hold, the said easement in said lands unto the said The C. C. C. & St. L. Ry. Co., its successors and assigns, for the construction, maintenance, and operation of said railroad tracks, the easement herein granted, however shall terminate whenever said grantee, its successors and assigns, shall cease to use said lands for the purposes herein set forth.

In Witness Whereof the grantors herein have hereunto set their

694 (Sheet 5 of 12 Sheets.)

hands and seals this 19th day of March 1908.

Signed, Sealed and Acknowledged in presence of:

(Signed) HENRY C. THOM.
(Signed) JULIA G. THOM.

ISABELLA O. BEATTY.
JOHN T. BRADY.

695 (Sheet 6 of 12 Sheets.)

THEURER NORTON PROVISION CO. ET AL. TO THE C. C. C. & ST. L. RY. CO.

Easement, March 18, 1908, Vol. 1135, Page 435

We, The Theurer Norton Provision Co., a corporation, C. A. Bressler and Mrs. C. A. Bressler, his wife, J. B. Foster and Mary B. Foster, his wife, The Retail Butchers Protective Association Company, William Bennett, John H. Bennett, and William J. Bennett, Partners, doing business under the firm name of Bennett

& Sons, Ernest H. Hughes and Lillian A. Hughes, his wife, and the Blumenstock & Reid Co., in consideration of the benefits and privileges accruing to us by reason thereof, do each severally for ourselves, and our heirs and assigns, to the extent of the ownership of each in the property hereinafter described, hereby grant unto the C. C. C. & St. L. Ry. Co., its successors and assigns, an easement for the construction, operation, and maintenance of a railroad track in, on and over the following-described property, to wit:

Being a strip of land 16 feet in width off the easterly side of sublots Nos. 285 to 255, inclusive, of Julia A. Sargent's Allotment of Part of Original Brooklyn Township Lot No. 34, as recorded in Vol. 23 on page No. 26 of the Records of Maps of Cuyahoga County, Ohio, and also for the construction maintenance and operation of a track upon and over the street upon which said lots abut.

To Have and To Hold the said easement in said lands unto the said The C. C. C. & St. L. Ry. Co., its successors and assigns, for the construction, maintenance and operation of said railroad track. The easement herein granted however shall terminate whenever

696 (Sheet 7 or 12 Sheets.)

said grantee, its successors and assigns, shall cease to use said land for the purposes herein set forth.

In witness whereof the grantors herein, the corporation by their proper officers, thereunto duly authorized, have hereto set their hands and seals, the 18th day of March, 1908.

THE THEURER NORTON PROVISION CO. ET AL.

697 (Sheet 8 of 12 Sheets.)

HENRY C. THOM ET AL. TO THE C. C. C. & ST. L. RY. CO.

Easement, June 7, 1911, Vol. 1340, Page 431

This Indenture witnesseth, that Henry C. Thom and Julia G. Thom, husband and wife, of Cook County in the State of Illinois, grantors, in consideration of the benefits accruing to them by reason thereof, do for themselves, their heirs and assigns, to the extent of their ownership in the property hereinafter described, hereby grant unto The C. C. C. & St. L. Ry. Co. a corporation existing under and by virtue of the laws of the States of Ohio and Indiana, Grantee, its successors and assigns, an easement for the construction, operation, and maintenance of a railroad track in and over the following described real estate in Cuyahoga County in the State of Ohio, to wit:

Being parts of Lots 164, 165, 251, 252, 253, 254, of Julia A. Sargent's Allotment of part of Original Lot 34, in the City of

Cleveland, Brooklyn Township, Cuyahoga County, Ohio, and being more particularly described as follows:

A strip of ground 16 feet in width and extending from the south line of Lot 165 northeastwardly to the north line of Lot 254, and being 8 feet on each side of the following described center line; from the intersection of the southeast line of Stock St. SW. with the east line of 65th St. SW. measure southwardly 1,349.6 feet along said east line of 65th St. SW. to a point where said center line produced intersects the last mentioned street line; thence deflecting 122° 20′ to the left measure northeastwardly 64 feet along said center line produced to a point in the south line of said Lot 165 for the place of beginning; thence continuing along the last described course measure 135 feet; thence tangent thereto along a curve to the left (the radius of which curve is 301.64 feet) measure northeastwardly 181 feet to a point where said center line intersects the north line of said Lot 254; containing an area of 0.12 of an acre more or less.

698 (Sheet 9 of 12 sheets.)

And the Grantors hereby assign to said grantee, its successors and assigns, all right and privilege which they, the said grantors, may have by virtue of a certain deed dated — day of October 1910, from Nadine J. Pope and Horace Heber Simmons, to the said grantors, to maintain a switch track over all other subolts in Julia A. Sargent's Allotment of Original Brooklyn Township Lot 34, which was devised by Julia A. Sargent to Nadine J. Pope and Horace Heber Simmons.

To Have and To Hold the same easement in said land unto The C. C. C. & St. L. Ry. Co., its successors and assigns, for the construction, maintenance, and operation of said railroad track; the said easement herein granted however shall terminate whenever said Railway Co., its successors and assigns, shall cease to use said land for the purposes herein set forth. This deed is made for the purpose of correcting description in land in deed from the grantors herein to the grantee herein, dated January 16, 1911, and recorded January 28, 1911, in Vol. 1300, Page 188, of the Records of Cuyahoga Co., Ohio.

In witness whereof the said Henry C. Thom and Julia G. Thom, have hereunto set their hand this 7th day of June, 1911.

(Signed) HENRY C. THOM.
(Signed) JULIA G. THOM.

Signed and Acknowledged in presence of:
R. D. BROWN.
R. E. FISHER.

699 (Sheet 10 of 12 sheets.)

This Indenture witnesseth, that The Cleveland Union Stock Yards Company, a corporation, Grantor, in consideration

of the mutual benefits accruing to it and to The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company by reason thereof, does for itself, its successors and assigns to the extent of its ownership in the property hereinafter described, hereby grant unto The Cleveland Cincinnati Chicago and Saint Louis Railway Company, a corporation Grantee its successors and assigns, an easement for the construction, operation, and maintenance of a railroad track in and over the following described real estate in Cuyahoga County in the State of Ohio, to wit:

Being a part of Lot 166 of Julia A. Sargent's Allotment of part of Original Lot 34 in the City of Cleveland, Brooklyn Township, Cuyahoga County, Ohio, and being more particularly described as follows:

A strip of ground 16 feet in width and extending from the east line of 65th Street SW. northeasterly to the north line of said Lot 166 and being 8 feet on each side of the following described center line:

From the intersection of the southeast line of Stock Street SW., with the east line of 65th Street SW., measure southwardly 1,349.6 feet along said east line of 65th Street SW., to a point where said center line intersects the last-named street line for the place of beginning;

Thence deflecting 122°20′ to the left measure northeastwardly 64 feet to the point where said center line intersects the north line of said Lot 166; Containing 1,024 square feet more or less.

It is understood however that in the event a connection between the Prim Street track and the main tracks of said Railway Company is made at or near Clark Avenue said Grantor reserves the privilege of having the connection switch between the Prim Street track and the Stock Yards track removed.

700 (Sheet 11 of 12 Sheets.)

To have and to hold the said easement in said land unto The Cleveland Cincinnati Chicago and Saint Louis Railway Company, its successors and assigns, for the construction, maintenance, and operation of said railroad track. The easement herein granted however, shall terminate whenever said Railway Company, its successors and assigns, shall cease to use the said land for the purposes herein set forth.

In witness whereof, the said The Cleveland Union Stock Yards Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 11th day of May A. D. 1911.

THE CLEVELAND UNION STOCK YARDS COMPANY,

By (Signed) JOHN F. WHITLAW, *Pres.*

Attest:

(Signed) ALLEN S. WALTZ, *Sec.*

(Sheet 12 of 12 Sheets.)

H. C. THOM, ET AL. TO C. C. C. & ST. L. RY. CO.

January 28, 1911, Vol. 1300, Page 182

Know all men by these presents:

That we, H. C. Thom and J. G. Thom, husband and wife, for and in consideration of the sum of $1.00 to us paid by the C. C. C. & St. L. Ry. Co., receipt of which is acknowledged, do hereby grant unto said The C. C. C. & St. L. Ry. Co., its successors and assigns, a 16-foot right-of-way for a switch track as now laid across sublots Nos. 163, 164, 165, 252, 253, and 254 in Julia A. Sargent's Allotment of part of original Brooklyn Township Lot No. 54, as shown by the recorded plant in Vol. 23 of maps, page 26 of Cuyahoga County Records, State of Ohio.

And said Grantors hereby assign to said Grantee, its successors and assigns, all right and privilege which they, the said Grantors, may have by virtue of a certain deed dated the — day of October 1910 from Nadine J. Pope and Harace H. Simmons to the said Grantors to maintain a switch track over all other sublots in Julia A. Sargent's Allotment of part of Original Brooklyn Township Lot No. 34, which were devised by Julia A. Sargent to Nadine J. Pope and Harace H. Simmons.

In witness whereof we have hereunto set our hands this 16th day of January A. D. 1911.

H. C. THOM.
J. G. THOM.

701

Exhibit No. 31

THE CLEVELAND UNION STOCK YARDS CO.

CLEVELAND, OHIO

DECEMBER 31ST, 1934.

A. Z. Baker, President & Gen. Mgr.
P. H. Coad, Sec'y. & Treas.

Mr. C. M. WILLIAMS,
Supt., The New York Central R. R. Co.,
Cleveland Union Terminal, Cleveland, Ohio.

DEAR SIR: Refer to your letter of December 26th, 1934, replying to our letters of November 21st and December 19th regarding the use of tracks owned by this Company for handling traffic to other industries, especially traffic competitive with the business of this Company.

It is noted that the matter is being given consideration and that you will advise us what, if anything, you may be able to do. You do not give any indication of the time when such advice can be

expected, and you express some doubt as to whether anything can be done.

The agreement entered into by The Clevland, Cincinnati, Chicago & St. Louis Railway Company and The Cleveland Union Stock Yards Company, dated June 16th, 1924, relating to use of side tracks, provides in paragraph "Fourth" that the railroad shall have the free and uninterrupted use of any and all tracks or portions thereof belonging to the Industry and located on its land. It is our purpose to limit the free use of these tracks to traffic not competitive with the business of this Company. Competitive traffic includes, certainly, livestock and probably in-bound movement of meat.

Paragraph "Sixth" of the agreement of June 16th, 1924, provides that the agreement shall terminate thirty days after written notice by either party to the other to that effect. This letter is the notice required.

After the termination of thirty days, on any livestock handled direct to the unloading chutes of slaughterers in Cleveland over the tracks and/or land of this Company, we will charge and expect you to pay us the charge named in our tariff No. 5 applicable to livestock consigned direct to packers and not offered for sale, which charge is at present

702 20¢ per head on cattle, 12½¢ per head on calves, 7½¢ per head on hogs, and 5¢ per head on sheep.

Pending the execution of a new agreement, all provisions of the agreement of June 16th, 1924, except those relating to the free use for competitive traffic may continue.

Yours very truly,

THE CLEVELAND UNION STOCK YARDS CO.,

(Sgd.) A. Z. BAKER,

President & General Manager.

AZB:W.

703 *Exhibit No. 32*

THE CLEVELAND UNION STOCK YARDS CO.

CLEVELAND, OHIO

JANUARY 11, 1934.

MR. C. M. WILLIAMS,

Supt., New York Central Lines,

Terminal Tower, Cleveland, Ohio.

DEAR SIR: For some time we have been permitting the free use of certain of our facilities in making deliveries of shipments consigned to packing concerns in the stockyards district. We find it necessary now to limit the free use to business or shipments not

competitive with the business of the Cleveland Union Stock Yards Company.

Consequently, beginning February 1st, 1935, we will apply the charges stated in Exception (3) Item 1, Cleveland Union Stock Yards Co. Tariff No. 5, a copy of which is enclosed.

The charges will be assessed against the line haul carrier and will be assessed regardless of whether unloaded at stockyards unloading chutes or at the chutes of the following companies: The Cleveland Provision Co., The Federal Packing Co., The Hughes Provision Co., Koblenzer Bros., Kreinberg & Krasny, Swift & Company, The Theurer-Norton Provision Co.

Bills will be rendered monthly.

This in no way affects the delivery of noncompetitive freight over or by means of our property.

If you desire it the livestock will be weighed and the weights furnished you for freight purposes.

Yours very truly,

THE CLEVELAND UNION STOCK YARDS CO.,

By (Sgd.) A. Z. BAKER,

President and General Manager.

A. Z. B.—W.

Same letter to all Cleveland Roads.

Exhibit No. 33

704 (Sheet 1 of 2 sheets.)

THE NEW YORK CENTRAL RAILROAD COMPANY

CLEVELAND,

F. S. Risley, Assistant Vice President & General Manager.

OCTOBER 6th, 1938.

THE STANDARD BEEF COMPANY, *Cleveland, Ohio.*

GENTLEMEN: Referring to the certain agreement between you and The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated March 17th, 1938, covering a side track at Cleveland, Ohio, as shown on plan No. C-7040-K3 attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West 65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track

owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of
705 (Sheet 2 of 2 sheets.)
advising you of the situation and we are asking you to endorse your acceptance on one copy of this letter, returning the same to us, which will constitute a modification of the aforesaid agreement and will relieve the Railroad Company from handling livestock over said track to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By (Sgd.) F. S. RISLEY,
Asst. Vice Pres. & Gen. Mgr.

CLEVELAND, OHIO, *October 15, 1938.*

The undersigned consents to a modification of the above-mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the track above referred to.

THE STANDARD BEEF COMPANY,
By (Sgd.) A. M. BALTDRINIC.

706 *Exhibit No. 34*

(Sheet 1 of 10 Sheets.)

OCTOBER 6th, 1938.

Mr. KALLEN KREINBERG AND WILLIAM A. KRESNY,
Co-partners doing business as Kreinberg and Kresny, Cleveland, Ohio.

GENTLEMEN: Referring to the certain agreement between you and The Cleveland, Cincinnati, Chicago and St. Louis Railway, predecessor to The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated August 1st, 1927, covering a side track at Cleveland, Ohio, as shown on plan dated July 1st, 1927, attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West 65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to

make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse your acceptance on one copy of this letter, returning the same to us, which will constitute a modification of the aforesaid

707 (Sheet 2 of 2 sheets.)

agreement and will relieve the Railroad Company from handling livestock over said track to your plant.

The New York Central Railroad Company,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By ——— ———,
Asst. Vice Pres. and Gen. Mgr.

Cleveland, Ohio, ---- 1935.

The undersigned consents to a modification of the above mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the track above referred to.

———— ————,
Copartners doing business as Kreinberg and Kresny.

708 *Exhibit No. 35*

(Sheet 1 of 2 sheets.)

The New York Central Railroad Company
CLEVELAND

October 6th, 1938.

F. S. Risley, Assistant Vice President & General Manager.
Earl C. Gibbs, Inc., *Cleveland, Ohio.*

Gentlemen: Referring to the certain agreement between you and The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated October 1st, 1937, covering sidetracks at Cleveland, Ohio, as shown on plan No. C-6959-K3 attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West

65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse

709 (Sheet 2 of 2 sheets.)

your acceptance on one copy of this letter, returning the same to us, which will constitute a modification of the aforesaid agreement and will relieve the Railroad Company from handling livestock over said tracks to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By (Sgd.) F. S. RISLEY,
Asst. Vice Pres. & Gen. Mgr.

CLEVELAND, OHIO, ———, 1938.

The undersigned consents to a modification of the above mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the tracks above referred to.

EARL C. GIBBS, INC.,
By (Sgd.) EARL C. GIBBS, *Pres.*

710 *Exhibit No. 36*

(Sheet 1 of 2 sheets.)

OCTOBER 6TH, 1938.

SWIFT & COMPANY, *Cleveland, Ohio.*

GENTLEMEN: Referring to the certain agreement between The Federal Packing Company, predecessor to Swift & Company, and The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated November 24th, 1930, covering a side track at Cleveland, Ohio, as shown on plan dated November 18th, 1930, attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West

35th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse your acceptance on one copy of this letter, returning the same

711 (Sheet 2 of 2 sheets.)

to us, which will constitute a modification of the aforesaid agreement and will relieve the Railroad Company from handling livestock over said track to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessees of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By (Sgd.) F. R. RISLEY (stamped),
Asst. Vice Pres. & Gen. Mgr. 10/7.

CLEVELAND, OHIO, ———, 1938.

The undersigned consents to a modification of the above-mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the track above referred to.

SWIFT & COMPANY.

By ——— ———.

712 *Exhibit No. 37*

NOVEMBER 22, 1938.
D—hgb.

SWIFT & COMPANY,
3237 W. 65th St., Cleveland, Ohio.

GENTLEMEN: In accordance with suggestion of our Mr. B. R. Brenan, am enclosing duplicate of our letter of October 6th, and would appreciate it if you will approve one copy and return for our file.

Yours very truly,

(Stamped) (Sgd.) F. S. RISLEY.
Asst. Vice Pres. & Gen. Mgr.

11/22.
Enc.
B—cy—Mr. B. R. Brenan.

713 *Exhibit No. 38*

SWIFT & COMPANY
Union Stock Yards
CLEVELAND, OHIO.

DECEMBER 2, 1938.
File 681.

MR. F. S. RISLEY,
Asst. Vice President, New York Central Railroad,
3rd and St. Clair Avenue, Cleveland, Ohio.

DEAR SIR: Referring to your letters of October 6 and November 22.

We have received a reply from Chicago in which they state they have no objection whatever to acknowledging the two letters which you sent us, but they do think that they should have some protection in the way of a written understanding that in the event of a strike, or anything else, that will prevent delivery of livestock through the Cleveland Stock Yards facilities, we can use this track for direct deliveries.

We shall be obliged if you will let us have a letter to this effect and we will immediately send it to Chicago and arrange for acknowledgement of your letter of October 6.

Yours respectfully,

SWIFT & COMPANY.
Per J. H. H.

Trans. Dept.
JHH:E
cc—Mr. E. F Burges, G. A., New York Central Railroad, 1119 Terminal Tower, Cleveland, Ohio.

714 *Exhibit No. 39*

JANUARY 6, 1939.
K—kb.

SWIFT & COMPANY,
3237 W. 65th St., Cleveland, Ohio.

GENTLEMEN: Referring to your letter of December 2, 1933, in which you refer to our letters to you of October 6th and November 22nd, respectively, relating to discontinuance of delivery of livestock over track owned by The Cleveland Union Stock Yards Company, and quote the substance of a letter to you from your Chicago office:

You must realize that the New York Central is not discontinuing the service referred to in its letters of October 6th and November 22nd because of a desire on its part to do so, but only because the price demanded by the Stock Yards Company for serv-

e over its sidetrack was so high that this Company could not fford to use the track and pay the price demanded.

Under the circumstances, you will also realize that the New York Central could not undertake to insure service over this track n case of a strike at the Stock Yards, unless some arrangements were made with the Stock Yards Company to permit the service upon a fair basis.

It occurs to us that your company might be better able to arrange for service over the Stock Yards track than the New York Central has been able to do.

Yours very truly,

(Sgd.) F. S. RISLEY (Stamped).

1/7.
B—cy—Messrs. W. N. King, F. O. Stafford, G. H. Jedele.

715

Exhibit No. 40

SWIFT & COMPANY
Union Stock Yards
CLEVELAND, OHIO

JANUARY 30, 1939.

Mr. F. S. RISLEY,
Ass't Vice President, New York Central Railroad,
3rd and St. Clair Avenue, Cleveland, Ohio.

DEAR SIR: We have been somewhat delayed in replying to your letter of January 6, with reference to your suggested change in our present agreement covering the track on the westerly side of West 65th Street and owned by the Cleveland Union Stock Yards Company, as we wished to make a thorough check of the situation. Since doing this, we find no logical reason for changing our agreement.

We find that you are not making any deliveries of livestock over this track and have not been for a good many months. Also, in the event of a strike, fire, or any other condition that should tie up the Stock Yards, we will naturally expect you to make direct deliveries of livestock to our plant over this track, which is the only track available for such purposes, and it is our understanding that you must provide proper delivery facilities for any consignee of livestock.

In any event, we cannot see why you wish to change this agreement, as you are not using this track for the delivery of livestock.

Yours respectfully,

SWIFT & COMPANY.
Per J. H. H.

Trans. Dept.
J. H. H.: E.

716 *Exhibit No. 41*

OCTOBER 6TH, 1938.

THE HUGHES PROVISION COMPANY,
Cleveland, Ohio.

GENTLEMEN: Referring to the certain agreement between you and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, predecessor to The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated March 28th, 1927, covering a sidetrack at Cleveland, Ohio, as shown on plan dated March 18th, 1927, attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West 65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse
717 your acceptance on one copy of this letter, returning the same to us, which will constitute a modification of the aforesaid agreement and will relieve the Railroad Company from handling livestock over said track to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By ——— ———,
Asst. Vice Pres. & Gen. Mgr.

CLEVELAND, OHIO, ———, 1938.

The undersigned consents to a modification of the above mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the track above referred to.

THE HUGHES PROVISION COMPANY.

By ——— ———

718 *Exhibit No. 42*

OCTOBER 6th, 1938.

CHRISTIAN KOBLENZER AND MATTHIAS KOBLENZER,
Copartners doing business as Koblenzer Brothers,
Cleveland, Ohio.

GENTLEMEN: Referring to the certain agreement between you and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, predecessor to The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated August 1st, 1922, covering a side track at Cleveland, Ohio, as shown on plan dated July 20th, 1923, attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West 65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse your acceptance on one copy of this letter, returning the same to us, which
719 will constitute a modification of the aforesaid agreement and will relieve the Railroad Company from handling livestock over said track to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By (Sgd.) F. S. RISLEY
Asst. Vice Pres. & Gen. Mgr.

CLEVELAND, OHIO, *Nov. 18, 1938*

The undersigned consents to a modification of the above-mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the tracks above referred to.

(Sgd.) CHRIST. KOBLENZER,
Copartners doing business as Koblenzer Brothers.

720 *Exhibit No. 43*

OCTOBER 6TH, 1938.

THEURER-NORTON PROVISION COMPANY AND SWIFT & COMPANY,
Cleveland, Ohio.

GENTLEMEN: Referring to the certain agreement between your companies and The New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated May 14th, 1934, covering a side track at Cleveland, Ohio, as shown on plan No. C–6332–U3 attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the track covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West 65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse your acceptance on one copy of this letter, returning the same to us, which will constitute a modification of the aforesaid agreement and
721 will relieve the Railroad Company from handling livestock over said track to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By ——— ———,
Asst. Vice Pres. & Gen. Mgr.

CLEVELAND, OHIO, ———, 1938.

The undersigned consents to a modification of the above mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the tracks above referred to.

THEURER-NORTON PROVISION COMPANY,
By ——— ———,
SWIFT & COMPANY,
By ——— ———,

722 *Exhibit No. 44*

THE THEURER-NORTON PROVISION CO.
CLEVELAND, O.

NOVEMBER 11, 1938.

MR. F. S. RISLEY,
Asst. Vice Pres. & Gen. Mgr.
New York Central R. R. Co., Cleveland, Ohio.

DEAR SIR: We wish to acknowledge receipt of your letter of October 6th, in duplicate, requesting us to agree to modification of our agreement dated May 14, 1934, to exclude livestock.

Although, as long as this agreement has been in effect, we have never used our siding for unloading livestock and at present do not intend to use the tracks for this purpose, we do not feel at this time, however, that we want to modify this agreement.

Should we intend, in the future, to use this siding for livestock we will be glad to take the matter up further with you.

Very truly yours,
THE THEURER NORTON PROVISION CO.
By AUG. F. LUCHT, *Secretary.*

fk.

723 *Exhibit No. 45*

NOVEMBER 29TH, 1938.

THEURER-NORTON PROVISION COMPANY, *Cleveland, Ohio.*

GENTLEMEN: Referring to the certain agreement between your company and the New York Central Railroad Company, lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway, dated January 22nd, 1934, covering sidetracks at Cleveland, Ohio, as shown on plan No. C-6199-KB, revised January 8, 1934, attached to said agreement and made a part thereof:

As you are aware it is necessary in order to reach the tracks covered by the aforesaid agreement for the Railroad Company to operate over a track which is located on the westerly side of West 65th Street and owned by The Cleveland Union Stock Yards Company.

This is to notify you that the Railroad Company is unable to make satisfactory arrangements with The Cleveland Union Stock Yards Company to permit it to handle livestock over the track owned by the Stock Yards Company. We are, however, permitted to handle dead freight, that is to say, any commodity other than livestock, upon and over said track for your accommodation.

This notice is addressed to you for the purpose of advising you of the situation and we are asking you to endorse your acceptance on one copy of this letter, returning the same to us,

which will constitute a modification of the aforesaid
724 agreement and will relieve the Railroad Company from handling livestock over said track to your plant.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Cleveland, Cincinnati, Chicago and St. Louis Railway.

By ——— ———,
Asst. Vice Pres. & Gen. Mgr.

CLEVELAND, OHIO, ———, 1938.

The undersigned consents to a modification of the above mentioned agreement and relieves the Railroad Company from any obligation to deliver livestock at its plant over the tracks above referred to.

THEURER-MORTON PROVISION COMPANY.
By ——— ———.

725 *Exhibit No. 46*

KOBLENZER BROTHERS
3187 West 65th Street
CLEVELAND, O.

NOVEMBER 18, 1938.

INTERSTATE COMMERCE COMMISSION, *Washington, D. C.*

GENTLEMEN: We have been operating a slaughtering establishment on W. 65th St., Cleveland, O., for years.

Have been buying cattle in the West and have had them delivered to our siding which is on a switch owned by the Big Four R. R. Co. To make delivery to this siding the cattle are switched over land owned by the Cleveland Union Stock Yards Co.

There has been no complaint about placing the cattle on our siding until recently, when the Stock Yards Co. refused to allow the Big Four R. R. Co. further use of the tracks on their property.

Several other slaughtering establishments use the same switch. The Big Four R. R. Co. will place cars on this switch to be loaded with fresh meat and will then switch them wherever they are to go, but absolutely refuse to place any livestock. This forces us to unload in the Stock Yards, which entails additional expense and the inconvenience of driving the cattle to our plant. The situation as explained by the Railroad Co. is due to the fact that the Stock Yards Co. is making an excessive charge against them for every car of livestock delivered over the Stock Yards property.

We feel that if the Railroad Co. is allowed to load and unload fresh meat they should also be allowed to place livestock.

Your opinion on this matter will be appreciated.

Yours very truly,

KOBLENZER BROS.
Per E. GALBRAITH,

726 *Exhibit No. 47*

INTERSTATE COMMERCE COMMISSION
Office of the Secretary
WASHINGTON

RXL-BGH

NOVEMBER 26, 1938.

In reply please refer to Informal Complaint No. 168646.

Mr. F. C. STAFFORD, Freight Traffic Manager, New York Central System, Terminal Tower Bldg., Cleveland, Ohio.

DEAR SIR: There is enclosed copy of letter of November 18th, 1938, addressed to the Commission by Koblenzer Brothers, Cleveland, Ohio, relative to the delivery in switch movement at complainant's plant in that city of carloads of livestock originating in the West.

In order that there may be no misunderstanding we would be glad to have you investigate the complaint and to furnish the Commission with a report dealing with the merits thereof and the attitude of the parties toward taking action looking to the relief sought.

Respectfully,

(S) W. P. BARTEL, *Secretary.*

Encl.

727 *Exhibit No. 48*

(Sheet 1 of 4 sheets.)

DECEMBER 6TH, 1938.
F-25840

Informal Complaint No. 168646, Koblenzer Bros., Cleveland, Ohio.

Mr. W. P. BARTEL,
Secretary, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: Responsive to request contained in your letter of November 26th, on above subject, I am pleased to advise as follows:

1. Koblenzer Bros. operate a slaughtering establishment fronting on West 65th Street in Cleveland, Ohio.

2. This plant is served by sidetrack from the Big Four Railway

under regular sidetrack agreement, this track being situated in West 63rd Street.

3. To reach this sidetrack of Koblenzer Bros., it is necessary for the Big Four Railway to pass over a track situated in West 65th Street, which is the property of and is located on the land of the Cleveland Union Stock Yards Company.

4. The Big Four Railway for many years has had an agreement with the Cleveland Union Stock Yards Company covering the unrestricted use by the Railroad of the Stock Yard Company's track in West 65th Street, on terms that were mutually satisfactory. Section Fourth of this contract reads, as follows:

"Fourth. All of said tracks, irrespective of ownership, shall be maintained by the Railroad without expense to the Industry; in consideration for which the Industry shall and by this instrument does grant to the Railroad, (a) the free occupancy of its land by any and all tracks or portions thereof located thereon belonging to the Railroad, and (b) the free and uninterrupted use of any and all tracks or portions thereof belonging to the Industry and located on its land."

728 (Sheet 2 or 4 sheets.)

5. On December 31, 1934, the Stock Yards Company notified the Railroad Company that the terms of this contract could no longer be carried out with respect to traffic that was competitive with the Stock Yards Company; that competitive traffic includes livestock; that this letter would constitute the required notice of thirty days as to termination of the agreement; that after the termination of thirty days certain other stated charges would be made against the Railroad Company on any livestock handled direct to the unloading chutes of slaughterers in Cleveland over the tracks and/or land of the Stock Yards Company. Copy of this letter of December 31, 1934, is attached, marked Exhibit "A."

6. Inasmuch as this letter of December 31, 1934, constituted a notice of termination of agreement covering the use of tracks serving the Stock Yards Company, a conference was held on January 19, 1935, at which the Railroad Company stated it could not consent to pay the charge asked by the Stock Yards Company for the use of its track in West 65th Street for handling of livestock consigned for direct delivery to industries (Koblenzer Bros.) that could be reached by railroad only through the use of said track, and the Stock Yards Company would not modify its demand, therefore, in order that railroad service might be continued to the Stock Yards Company and the Stock Yards District a supplementary agreement was entered into, which provided under Section Fourth for the continued uninterrupted use of said tracks except for "competitive traffic," as to which a separate agreement was to be negotiated covering charges to be assessed. Section Fourth of

trackage agreement as amended January 25, 1935, is as follows:
"Fourth. All of said tracks, irrespective of ownership, shall be maintained by the Railroad without expense to the Industry; in consideration for which the Industry shall and by this instrument does grant to the Railroad, (a) the free occupancy of its land by

729 (Sheet 3 of 4 sheets.)

any and all tracks or portions thereof located thereon belonging to the Railroad, and (b) the free and uninterrupted use, except for competitive traffic a charge for which use shall be the subject of a separate agreement, of any and all tracks or portions thereof belonging to the industry and located on its land."

7. Several conferences have since been held between the Cleveland Union Stock Yards Company and the Railroad Company in an endeavor to arrive at terms of separate agreement for use of this sidetrack for handling livestock, as well as settlement of other demands made by the Cleveland Union Stock Yards Company against the carriers for a different basis of compensation for performing the transportation service at the Cleveland Union Stock Yards Company, which for several years has been on a basis of $1.00 per deck for loading or unloading. At none of these conferences could satisfactory agreement be reached. The final conference was held on September 7th, 1938, in which it was agreed that the words "competitive traffic" as used in the supplemental agreement of January 25th, 1935, meant "livestock." At this conference also the Stock Yards Company named a charge of $5.00 per deck as their price for the use by the Railroad of the sidetrack in 65th Street for the handling of livestock to certain slaughterers.

8. The Railroad Company could not consent to meet these demands of the Cleveland Union Stock Yards Company for the use of this track for handling livestock. The industries having sidetracks that are served through the medium of this track in West 65th Street, are carried in the Big Four switching tariff and are open to all carriers in Cleveland on a reciprocal switching basis, which is $3.15 per car. It was, therefore, necessary for the Big Four Railway to take appropriate action to relieve itself of the requirement of handling livestock over this track of the Cleveland Union Stock Yards Company.

730 (Sheet 4 of 4 sheets.)

9. Switching tariff was amended by Supplement No. 44, effective November 12, copy attached. Amendment to sidetrack agreement was submitted and accepted by the complainant after full explanation of the circumstances. Copy of agreement to this amendment is attached, marked Exhibit "B".

10. Of the various industries having sidetrack agreements and reached only through the use of this track in West 65th Street

only two of them are equipped to accept livestock direct at their packing plants, i. e., Koblenzer Bros. and Swift & Co. have used it very little for that purpose and Koblenzer Bros. use it only in part for their receipts of livestock, the balance being taken through the Cleveland Union Stock Yards Company.

11. The Cleveland Union Stock Yards Company have presented the Railroad Companies with bills each month for transportation service on the arbitrary basis stated by the Cleveland Union Stock Yards Company in their letter of January 11, 1935, copy of which is attached, marked Exhibit "C". Carriers have not paid these bills but have continued to tender the Stock Yards Company vouchers in payment of transportation service of loading and unloading at $1.00 per deck, which vouchers have been refused by the Stock Yards Company. Suit has now been entered against the New York Central and Big Four Railroads for the amounts of these unpaid bills, together with interest, aggregating $58,561.08, this suit being entered in the Court of Common Pleas, Cuyahoga County, State of Ohio, on November 3rd, 1938. Case has now been ordered removed to Federal District Court for Northern District of Ohio, Eastern Division. The amount above named is upon the basis of charges filed by the Cleveland Union Stock Yards Company with the Department of Agriculture and covers services performed by the Stock Yards Company in addition to the loading or unloading of stock in suitable pens as provided in Section 15 (5) of the Interstate Commerce Act.

Your very truly,

(Signed) F. O. STAFFORD,
Freight Traffic Manager.

731 *Exhibit "A"*

THE CLEVELAND UNION STOCK YARDS CO.
CLEVELAND, O.

DECEMBER 31ST, 1934.

Mr. C. M. WILLIAMS,
Supt., The New York Central R. R. Co.,
Cleveland Union Terminal, Cleveland, Ohio.

DEAR SIRS: Referring to your letter of December 26th, 1934 replying to our letters of November 21st and December 19th regarding the use of tracks owned by this Company for handling traffic to other industries, especially traffic competitive with the business of this Company.

It is noted that the matter is being given consideration that you will advise us what, if anything, you may be able to do. You do not give any indication of the time when such advice can be ex-

pected, and you express some doubt as to whether anything can be done.

The agreement entered into by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Cleveland Union Stock Yards Company, dated June 16th, 1924, relating to use of sidetracks, provides in paragraph "Fourth" that the railroad shall have the free and uninterrupted use of any and all tracks or portions thereof belonging to the Industry and located on its lead. It is our purpose to limit the free use of those tracks to traffic not competitive with the business of this Company. Competitive traffic includes, certainly, livestock and probably inbound movement of meat.

Paragraph "Sixth" of the agreement of June 16th, 1924, provides that the agreement shall terminate thirty days after written notice by either party to the other of that effect. This letter is the notice required.

After the termination of thirty days, on any livestock handled direct to the unloading chutes of slaughterers in Cleveland over the tracks and/or land of this Company, we will charge and expect you to pay us the charge named in our tariff No. 5 applicable to livestock consigned direct to packers and not offered for sale, which charge is at present 20¢ per head on cattle, 12¢ per head on calves, 7½¢ per head on hogs, and 5¢ per head on sheep.

Pending the execution of a new agreement, all provisions of the agreement of June 16th, 1924, except those relating to the free use for competitive traffic may continue.

THE CLEVELAND UNION STOCK YARDS CO.,

By (Signed) A. E. BAKER, *Pres. & Gen. Mgr.*

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Exhibit "C"

THE CLEVELAND UNION STOCK YARDS CO.

CLEVELAND, OHIO

JANUARY 11, 1935.

Mr. C. M. WILLIAMS,
Supt., New York Central Lines,
Terminal Tower, Cleveland, Ohio.

DEAR SIR: For some time we have been permitting the free use of certain of our facilities in making deliveries of shipments consigned to packing concerns in the stockyards district. We find it necessary now to limit the free use to business or shipments not competitive with the business of the Cleveland Union Stock Yards Company.

Consequently, beginning February 1st, 1935, we will apply the charges stated in Exception (3) Item 1, Cleveland Union Stock Yards Co. Tariff No. 5, a copy of which is enclosed.

The charges will be assessed against the line haul carrier and will be assessed regardless of whether unloaded at stockyards unloading chutes or at the chutes of the following companies: The Cleveland Provision Co., The Federal Packing Co., The Hughes Provision Co., Koblenzer Bros., Kreinberg & Krasny, Swift & Company, The Theurer-Norton Provision Co.

Bills will be rendered monthly.

This in no way affects the delivery of noncompetitive freight over or by means of our property.

If you desire it the livestock will be weighed and the weights furnished you for freight purposes.

Yours very truly,

THE CLEVELAND UNION STOCK YARDS CO.,

By (signed) A. E. BAKER,

President and General Manager.

A. E. B.—W.

Same letter to all Cleveland Roads.

733 *Exhibit No. 49*

STIPULATION

Testimony of Mr. Pearson F. Marsh, Special Agent of the Interstate Commerce Commission, in Ex Parte No. 127 hearing, July, 1939, in which he stated (R. 824–825, Ex Parte 127):

"In 1916, Swift & Company purchased 1,000 shares of $100 par stock (*voting*) of The Cleveland Union Stock Yards Company for $100,000. In 1922, Swift & Company received a stock dividend of 60 per cent—(and) an additional 600 shares. In 1924, Swift & Company sold 300 shares after which its holdings were 13,000! (*1,300*) shares or approximately 6½ per cent of the total 200,000 shares then outstanding. In 1928, in connection with the reorganization of The Cleveland Union Stock Yards Company, Swift & Company turned in its 1,300 $100 par shares and received in exchange 5,200 shares of new no par stock. In 1933, Swift & Company sold 237 shares, and in March 1936, sold its remaining interest of 4,963 shares. Since that date, Swift & Company has had no interest in The Cleveland Union Stock Yards Company." [Italics ours.]

Swift & Company disposed of its shareholdings pursuant to an order dated February 27, 1920, issued by the Supreme Court of the District of Columbia in Equity Case 37623, entitled United States of America, petitioner, v. Swift & Company, et al., defendants. On January 31, 1931, Swift & Company was ordered to divest itself of ownership in public stockyard market companies and stockyard terminal railroads on or before January 31, 1932,

and asked for an extension of time in which to dispose of its interest and by an entry filed in this Equity Case No. 37623, on February 8, 1936, Swift & Company reported disposing of 4,963 shares of the capital stock of the Cleveland Union Stock Yards Company to John DeWitt, which sale was confirmed.

735 *Exhibit No. 50*

(Registry No. 56438-A)

CONTRACT No. 7349, C. C. C. & St. L. RY. CO., SWIFT & CO.

Crossing gates and signals at Union Stock Yards and West 65th Street, Cleveland, Ohio.

NOVEMBER 2, 1926.

This Agreement, made and executed in duplicate this 2nd day of November, 1926, by and between The Cleveland, Cincinnati, Chicago and Saint Louis Railway Company, a corporation, as First Party, hereinafter called the "Railroad," and Swift and Company, a corporation, as Second Party, hereinafter called the "Industry," witnesseth:

Whereas the Industry desires to furnish, install, maintain and operate a set of twelve (12) gates and necessary electric gate signals to permit of the safe driving of stock from the Union Stock Yards across three tracks operated over by the Railroad and also across West 65th Street to the plant of the Industry at Cleveland, Cuyahoga County, Ohio, the closed position and approximate location of said gates being outlined by yellow lines upon the blueprint hereto attached, and

Whereas the Railroad, insofar as concerns its interest, is willing to permit the Industry to furnish, install, maintain and operate said gates and signals under the terms and conditions of this agreement;

Now, therefore, it is mutually covenanted and agreed:

First. That the Railroad, insofar as its interests are concerned, will permit the Industry to furnish, install and operate said gates and necessary electric gate signals of the construction and in the location indicated on the blueprint hereto attached, dated April 28th, 1925, and made a part of this agreement. Said gates and signals shall be constructed and shall be operated, maintained and renewed by the Industry at its own expense.

Second. That the Industry will operate said gates and gate signals or cause them to be operated in such a manner as not to interfere with the safe operation by the Railroad over said tracks.

Third. That the Industry hereby agrees to assume and save the Railroad free and harmless from all responsibility for loss

of, damage and injury to all stock and the Industry's employes using the said gates, occasioned by any act or omission of the Industry, and regardless of whether such loss, damage or injury shall arise from the act or omission of the Industry, or from concurring negligence of both parties, their agents, servants or employes.

Fourth. That either party hereto may terminate this agreement by giving to the other party thirty (30) days' notice in writing of its intention so to do.

In witness whereof, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

THE CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY,
By: C. S. MILLARD, *General Manager.*
SWIFT & COMPANY,
By: ALLEN B. SWIFT, *Vice President.*

Witnesses:
S. W. GOULD.
P. T. W.
T. J. H.–*Sup't*
H. N. Q.–R. C. M.
W. H. S.–M. S. A. B. S.
R. O. H.–J. S. B.–H. W. T.
Attest:
B. A. PEACOCK, *Sec'y*

736 *Exhibit No. 51*

Before the Interstate Commerce Commission

Docket Nos. 28421, Sub. 1

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

vs.

LIVESTOCK TERMINAL SERVICE COMPANY

Joint petition of complainants and defendant for rehearing, reconsideration, and redetermination of reasonable charges for loading and unloading livestock at Cleveland, Ohio, as of June 10, 1944, and thereafter

Come now The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and The Wheeling and Lake Erie Railway Company, complainants in the above-entitled pro-


WEST 65TH
STREET
SWIFT & CO.
PLAN
SWIFT & CO.
Nov. 7, 1926

ceeding (hereinafter called the railroads), and Livestock Terminal Service Company, the defendant in this proceeding (hereinafter sometimes called the Service Company) and file this their petition for rehearing, reconsideration, and for a redetermination
737 of reasonable charges for loading and unloading livestock at The Cleveland Union Stock Yards Company, Cleveland, Ohio, as of June 19, 1944, and thereafter. In support of the said petition, the railroads and Service Company respectfully show:

I

In its report and order of May 11, 1943, in Docket 28241, Sub. No. 1 (255 I. C. C. 579), among other things the Commission prescribed a charge of $1.25 per deck for the services of the Service Company in loading and unloading livestock at the Cleveland Union Stock Yards, Cleveland, Ohio. In accordance with the Commission's order, the said charge was filed in tariffs of the Service Company and is presently shown in that Company's I. C. C. No. 4. The said charge of $1.25 was determined by the Commission on evidence submitted as of April 24, 1942, the last day of the hearing. Much of that evidence was conflicting in character, in that there had been a dispute between the parties on many points important in the determination of reasonable charges for loading and unloading.

II

The railroads and Service Company recognize that there have been material changes in the circumstances and conditions in respect of the loading and unloading of livestock at Cleveland since the presentation of evidence on which the Commission rendered its decision in this proceeding. The more important of these changes, as seen by the Service Company and rail-
738 roads, may be stated concisely as follows:

(a) On the application of the Service Company in Finance Docket 14038, Division 4 authorized abandonment of operations by that Company on and after June 19, 1944. The said application for abandonment rested chiefly on the Service Company's contentions that it could not pay its operating expenses and profitably continue operations on the charge of $1.25 per deck for loading and unloading under conditions which presently prevail.

(b) The authority given the Service Company to abandon operations has confronted the railroads with a difficult, immediate and very pressing problem, in that it threatens the continued and orderly handling of livestock to and from the Cleveland Union Stock Yards.

(c) On March 11, 1944, a fire destroyed some of the facilities at the Cleveland Union Stock Yards, and a determination of the facilities that should be rehabilitated and maintained in the future is necessarily associated with the question as to the charges which may be paid in the future for loading and unloading livestock at the Cleveland Union Stock Yards.

(d) The Service Company contends that its operating expenses, particularly its labor costs, materially increased since the record was closed in the instant proceeding, but the railroads neither admit nor deny the correctness of this contention. The Service Company also contends that as of June 19, 1944, and thereafter the Commission's previous findings will not allow for sufficient facilities for loading and unloading services, but the railroads neither admit or deny the correctness of this contention.

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III

Because of changed conditions, as alleged in paragraph II hereof, the railroads and the Service Company agree that the Commission should reexamine the question of reasonable charges for loading and unloading, which should apply on and after June 19, 1944. Pending the determination of this issue by the Commission, the Service Company and The Cleveland Union Stock Yards Company will perfect some arrangement that will enable the Service Company to continue operations on and after June 19, 1944, for a period of approximately sixty (60) days, but such operations shall be without prejudice to the Service Company's right thereafter to avail of any course which may be open to it, including any course which it may have under findings and order or orders now or hereafter entered in Finance Docket 14038.

IV

(a) The railroads, the Service Company and The Cleveland Union Stock Yards Company have agreed to expedite the preparation and presentation of evidence that will be required for the Commission's further decision. To that end they have agreed to do their utmost to come to a common understanding on the additional evidence to be presented, in the hope that there will be very few, if any, material points or important evidence on which the parties are in conflict. The railroads and Service Company ask that the case be assigned for hearing at Cleveland, Ohio, within approximately 25 to 30 days from the date of the filing of this petition; and they agree that briefs, if any, should be submitted within 15 days after such oral hearing and that a proposed report by an examiner and oral argument are waived. The railroads and Service Company ask that the further

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decision of the Commission be rendered as promptly as possible. In the time which elapses between the date of the filing this petition and the date of the hearing the parties will progress their negotiations, and if they can agree on all disputed matters they will submit the additional evidence in the form of a stipulation and ask the Commission to waive oral hearing.

(b) In negotiations between the Service Company, Stock Yards Company and the railroads, following the Commission's findings of May 19, 1944, in Finance Docket 14038, efforts have been made to reach a solution of the situation having proper regard for the paramount public interest, in the hope that such a solution could be presented for consideration of the Commission; and efforts have also been made to reach a formula for arriving at the
741 costs of labor and the reasonable value of facilities necessary in performing the service of loading and unloading livestock on and after June 19, 1944. The railroads are of the opinion that in the event agreement cannot be reached on any of these subjects such differences shall be determined by the Commission upon the evidence to be presented to it. To illustrate, if in the course of negotiations the interested parties are unable to agree among themselves upon the value that should be placed on facilities necessary for loading and unloading, it is agreed that such value, as may be fixed by the Commission, for purposes of the reasonable loading and unloading charge on and after June 19, 1944, should also be the value for purposes of the rental which should be paid by the Service Company to the Stock Yard Company for such facilities. While denying that the Commission has jurisdiction as to it, and also denying that the Commission has jurisdiction to determine the value of or rental for any of its property, the Stock Yards Company has made a commitment to the Service Company that during the continuance of operations by the Service Company, on and after June 19, 1944, the Stock Yards Company will accept the value as shall be determined by the Commission, under the above-mentioned circumstances, as the basis for the rental to be paid by the Service Company; the said commitment however is subject to the rights of the Stock Yards Company to terminate its lease or leases on a reasonable basis.

V

742 Pending the further decision of this Commission, the Service Company will continue to perform loading and unloading at Cleveland Union Stock Yards, Cleveland, Ohio. The railroads will continue to pay $1.25 per deck for that service, but will readjust the charges on shipments handled on June 19, 1944, and thereafter, to conform to the Commission's further find-

ing in this proceeding. While this proceeding is under consideration by the Commision the parties also will give continued thought to the problem of handling livestock at Cleveland, in the hope that some permanent arrangement, mutually satisfactory to all interested parties, can be perfected.

VI

The filing of this joint petition by the railroads and the Service Company, and the resulting action of the Commission, are without prejudice to the contentions and rights of the railroads, the Service Company or Stock Yards Company under petitions, orders, and findings in other cases before the Commission or in cases pending in courts, or otherwise. In other words, this joint petition is intended to result in a determination of reasonable charges for loading and unloading as of June 19, 1944, and thereafter, without prejudice to the contentions and rights of the parties because of issues pending or action taken in this or in other proceedings. In furtherance of the desire of the parties that the status quo should be maintained, as aforesaid, the railroads do not withdraw their pending petitions recently filed in Finance Docket 14038 and Ex Parte 127, but they ask that the Commission
743 withhold action on the said petitions pending a determination by the Commission of reasonable loading and unloading charges as of June 19, 1944, and thereafter, based on the further evidence to be submitted in the instant proceeding. To the same end the railroads and Service Company agree that the Service Company reserves all its rights and advantages under the findings and order or further orders in Finance Docket 14038, subject to the Commission's later disposition of the petition pending in that case—assuming that it later becomes necessary for the railroads or the Service Company to urge the Commission to consider and rule on the said petition.

Wherefore, the Railroads and the Service Company pray:

(a) That the Commission reopen this proceeding, and upon reconsideration, determine the reasonable charge for loading and unloading livestock at the Cleveland Union Stock Yards, Cleveland, Ohio, as of June 19, 1944, and thereafter;

(b) That after determining the reasonable charge for loading and unloading livestock as of June 19, 1944, and thereafter, the Commission modify its order entered herein on the 11th day of May 1943, to conform with the Commission's findings upon reconsideration and that the Commission authorize a readjustment of loading and unloading charges on shipments handled on and after June 19, 1944 to conform with the Commission's further findings;

(c) That this proceeding be expedited and that, if pos-
744 sible, it be handled by the Commission in accordance with the suggestions as to procedure set forth in paragraph IV of this petition;

(d) That the Commission enter such further order or orders as it may deem proper in the premises.

Respectfully submitted.

ANDREW P. MARTIN,
WILLIS T. PIERSON,
DWIGHT B. BUSS,
G. H. P. LACEY,
JOHN J. FITZPATRICK,
W. N. KING,
R. R. PIERCE,
1324 West 3rd St., Cleveland 13, Ohio,
Counsel for Complainants.
C. B. HEINEMANN, JR.,
For Defendant, Livestock Terminal Service Company.

JUNE 17, 1944.

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing joint petition of complainants and defendant upon all parties of record in Finance Docket 28421 Sub 1.

Dated at Cleveland, Ohio, this 17th day of June 1944.

R. R. PIERCE, *of Counsel.*

745 *Exhibit No. 52*

ORDINANCE No. 10944

An Ordnance Granting to the Cleveland, Cincinnati, Chicago & St. Louis Railway Company the Right-of-way To Lay a Switch Track Across and Along West 63rd Street

SECTION 1. Be it ordained by the Council of the City of Cleveland, State of Ohio, that permission, on the conditions hereinafter mentioned, is hereby given to the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, to lay a switch track across and along West 63rd Street from said Company's tracks at West 63rd Street, shown by the red lines on the plat, which plat is referred to herein and is attached to the original copy of this Ordinance.

SECTION 2. That such switch track should have no frogs or switch points within the limits of the street and shall be laid to the grade of said West 63rd Street, as now established and paved, and shall be relaid to such grades as may hereafter be established and shall be planked between the rails and 18 inches outside of

each rail. The water from the gutters of said street shall be conveyed under said track in a proper and acceptable manner; or the necessary catchbasins shall be constructed and connected with the sewer in said West 63rd Street, as the City Engineer shall direct at the expense of said Railroad Company; any paving displaced shall be relaid outside of track and at the expense of said Railroad Company, and said tracks, gutters, and planking shall be kept in constant good repair, and the track properly lighted, by or at the expense of said Railroad Company, its successors or assigns as the Board of Public Service of the City of Cleveland may direct, and to the acceptance of said Board.

SECTION 3. That the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company, its successors or assigns, hereby obligates itself to at any and all times hold the City harmless from any damage to person or property or expense of any kind, that may arise by reason of said switch track or the permission herein granted; to at all times fully obey any general or special regulations that may now or hereafter be enacted governing or applicable to, the said switch track, to waive any and all rights to the contrary, and will support or remove said track as may be
746 ordered by the Board of Public Service when necessary for the purpose of making any general improvements in said West 63rd Street, and at no time to stand cars upon any portion of said West 63rd Street, or allow the same to be done.

SECTION 4. That the Council reserves the right to at any and times to revoke this permission, and that whenever so revoked that the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company, its successors or assigns, agree to remove the track from said West 63rd Street and return the street and pavement to the condition required by the Board of Public Service within 30 days after receiving notice of the revocation of this grant; and in case it shall not so remove the same and repair the pavement properly, then the Board of Public Service may cause the same to be done at the expense of said Company, its successors or assigns.

SECTION 5. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law, and the filing with the City Clerk of a written acceptance of the terms and conditions hereof by said Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and the payment to the City Auditor the expense of printing and advertising the same.

Passed May 25, 1908.

C. W. LAPP,
President of the Council.
PETER WITT,
City Clerk.

Approved by the Mayor May 28, 1908.

748 *Exhibit No. 63*

Agreement, made and entered into this Fourteenth day of July 1916, by and between the Cleveland Union Stock Yards Company, a corporation, as first party, and The Cleveland Provision Company, a corporation, witnesseth:

Whereas the party of the first part has for years had close relations with the party of the second part, the second party having been and now being a large patron of the first party; and

Whereas the first party believes it to be for its advantage to make the connection closer and to procure a location of a portion of the plant of the second party adjoining the property of the first party,

Now, therefore, it is mutually agreed between the parties hereto as follows:

First party agrees to sell and convey to second party, by good and sufficient deed, free of all incumbrance except certain reservations made by the Scheurens in their deed to first party upon a portion of the premises, the following described premises, to wit:

Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being part of original Brooklyn Township, Lot number 34, now in the City of Cleveland, bounded as follows:

Beginning in the westerly line of West 65th Street, at the intersection of said westerly line with the southerly line of said original lot number 34; thence northerly along the westerly line of West 65th Street $95\frac{5}{100}$ feet to an angle in said westerly line of West 65th Street; thence northerly along the westerly
749 line of West 65th Street, $321\frac{37}{100}$ feet to a stake; thence westerly at right angles with the westerly line of West 65th Street 745 feet; thence northerly parallel with the westerly line of West 65th Street 200 feet; thence westerly at right angles with the westerly line of West 65th Street $156\frac{50}{100}$ feet; thence southerly parallel with the westerly line of West 65th Street $540\frac{98}{100}$ feet to the southerly line of said original Brooklyn Township lot number 34; thence easterly along the southerly line of said original lot, $898\frac{14}{100}$ feet to the beginning and containing $7\frac{751}{1000}$ acres of land according to the survey of Charles W. Rout, C. E., made July 1916.

Also, to grant to second party a right-of-way connecting the right-of-way of the Big Four Railroad, so called, with the above-described parcel, said right-of-way to be sixteen (16) feet in width; the first party reserving, in connection therewith, the right to tap on either or both sides for such switch tracks as it may desire any track or tracks the second party may place on said right-of-way.

First Party also agrees to issue and deliver to second party two thousand (2,000) shares of its capital stock of the par value of One Hundred Dollars ($100.00) each, being Two Hundred Thousand Dollars ($200,000.00) par value of the stock of first party.

In consideration therefor, second party agrees to pay to first party upon the delivery of said stock the sum of Two Hundred Thousand Dollars ($200,000.00) in cash.

Second party also agrees that the investment it is making in said stock and in said land is to be a permanent investment
750 on its part, for the purpose of developing its business; that it regards its alliance with the first party as helpful in developing its business, so that the interests of each in making this contract are intended to be mutual and permanent; and second party agrees also to begin immediately the erecting upon the above-described premises a beef-packing house and to expend within the next year at least One Hundred and Fifty Thousand ($150,000.00) Dollars in the erection of improvements upon said property, to be used as a permanent place for carrying on the beef-packing business by the second party and such other lines of business as the future shall from time to time develop.

THE CLEVELAND UNION STOCK YARDS COMPANY,
By E. A. MURPHY, *President.*
ALLEN S. WALTZ, *Secretary.*
THE CLEVELAND PROVISION COMPANY,
By S. T. NASH, *President.*
JOS. H. NASH, *Secretary.*

751 *Exhibit No. 54*

THE CLEVELAND UNION STOCK YARDS COMPANY TO THE CLEVELAND PROVISION COMPANY

Dated July 14, 1916, W. D., Recorded Vol. 1814, Page 86, Deed Cons. $100.00

Know all men by these presents, that the Cleveland Union Stock Yards Company, a corporation, the grantor for the consideration of $100.00 received to its full satisfaction of the Cleveland Provision Company, a Corporation the grantee, to give, grant, bargain, sell, and convey unto the said grantee, its successors and assigns the following described premises:

Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being part of original Brooklyn Township, Lot 34 now in the City of Cleveland, bounded as follows:

Beginning in the Wly. line of West 65th Street at the inter-

section of said westerly line with the southerly line of original lot 34.

Thence northerly along the westerly line of West 65th Street 9.53 ft. to an angle in said westerly line of West 65th Street.

Thence northerly along the westerly line of West 65th Street 321.27 ft. to a stake.

Thence westerly at right angles with the westerly line of West 65th Street 745 feet.

Thence northerly parallel with the westerly line of West 65th Street 200 ft.

Thence westerly at right angles with the westerly line of West 65th Street 156.5 feet.

Thence southerly parallel with the westerly line of West 65th Street 549.68 ft. to the southerly line of said original Brooklyn Township Lot 34.

Thence easterly along the southerly line of said original Lot, 893.11 feet to the beginning. Containing 7.751 acres of land.

752 A portion of the above-described property was conveyed to The Cleveland Union Stock Yards Company by Phillipina Scheuren et al., by deed recorded in Vol. 1799, Page 588 of Cuyahoga County Records, July 3, 1916, which deed contained the following reservations:

Excepting and reserving to the Grantors, their heirs and assigns, the right to continue until Nov. 1, 1918, the full use and enjoyment of all that portion of the premises herein described other than the meadowland, the part the right to the use and occupancy of which is reserved being now planted to asparagus beds, etc.

The Grantee herein accepts, this conveyance, subject to the aforesaid reservations. Also a right-of-way connecting the right-of-way of the Big-Four Railroad, so called, with the above-described premises, said right-of-way being 16 ft. in width and to be located and particularly described by a conveyance from Grantor to Grantee hereafter to be made; the Grantor reserving, in connection therewith, the right to tap on either or both sides for such switch tracks as it may desire, or tracks the Grantee, its successors or assigns, may place on said right-of-way, be the same more or less, but subject to all legal highways.

To have and to hold the above-granted premises with the appurtenances thereunto belonging, unto the said grantee, its successors and assigns forever, and the said grantor, does for itself and its successors and assigns, covenant with the said grantee, its successors and assigns, that at and until the ensealing of these presents, it is well seized of the above-described premises as a good and indefeasible estate in Fee Simple, and have good right to bargain and sell the same in a manner and form as above written; that the same are free and clear from all incumbrances whatsoever and

that it will Warrant and Defend said premises to the said grantee against all lawful claims and demands whatsoever.

753 In witness whereof, the Cleveland Union Stock Yards Company by its President duly attested by its Secretary, they being thereunto duly authorized by a Resolution of the Board of Directors, of said Company, has hereunto set its hand and corporate seal this 14th day of July in the year 1916.

THE CLEVELAND UNION STOCK YARDS COMPANY,
E. A. MURPHY, *President*,
ALLEN S. WALTZ, *Secretary*.

Witnesses:
S. H. TOLLES.
ANDREW SQUIRE.
(Jurat.)

F. S. WHITCOMB, *Notary Public*.

U. S. Rev. Stamps $24.00; Transferred 7-14-16; Received 7-14-16; Recorded 7-15-16; Fee for Record $1.40.

HOSEA PAUL, *Recorder*.

754 *Exhibit No. 55*

GRANT OF RIGHT-OF-WAY

Know all men by these presents: That The Cleveland Union Stock Yards Company, a Corporation, Grantor for the consideration of $10.00 and other valuable consideration received to its full satisfaction of Irving Kane, Trustee for the Cleveland Provision Company, under proceedings in the United States District Court for the Northern District of Ohio, Eastern Division, being Cause No. 35635 in the Bankruptcy Division of said Court, the Grantor, does hereby grant and release unto the said Grantee, his successors and assigns, a 16 ft. right-of-way hereinafter particularly described, over the following described property:

Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being part of original Brooklyn Township Lot No. 34, bounded Northwesterly by the Southeasterly line of the Cleveland, Cincinnati, Chicago and St. Louis Railroad and the southeasterly line of the Wheeling & Lake Erie Railroad, on the east by the westerly line of West 65th Street, and the westerly line of premises owned by Cleveland Provision Company, southerly by the northerly line of premises owned by the Cleveland Provision Company and by the southerly line of said original Lot No. 34, and westerly by the Westerly line of said original Lot No. 34, excepting therefrom land fronting on the westerly side of West 65th Street, now owned by Kreinberg and Krasny, Incor-

porated, acquired by deed dated June 1, 1932, and recorded in Volume 4259, Page 689 of Cuyahoga County records of deeds, and a parcel of land fronting on the westerly side of West 65th Street, owned by Rose M. Lasko, acquired by deed dated April 21, 1936, recorded in Volume 4609, Page 270 of Cuyahoga County records of deeds, which said right-of-way is described as follows:

Being a right-of-way 16 ft. in width, the center line of which begins at a point in the north line of property of the Cleveland Union Stock Yards Company, described above and the south line of the right-of-way of the Cleveland, Cincinnati, Chicago, & St. Louis Railway Company 400 ft. south 47°58′ West of the intersection of the south line of said Railway Company and the west line of West 65th Street, said intersection being the northeast corner of said land of the Cleveland Union Stock Yards Company, thence South 27° west 160 ft. to a point 8 ft. east of the right-of-way of the Wheeling & Lake Erie Railroad; thence South 47°58′ West along the south line of the said Wheeling & Lake Erie right-of-way 1,050 ft., thence in a 14° curve to the left, south 40° West 100 ft. south 26° West 100 ft., South 12° West 100 ft., South 2° East 100 ft., South 16° East 100 ft., South 30° East 100
755 ft. South 44° East 100 ft., South 58° East 100 ft., Thence north of a building known as the Equestrium South 72° East 150 ft. to a point in the north line of the property now owned by the Cleveland Provision Company 60 ft. east of the northwest corner of said property, upon which the Grantor agrees, at its own expense, to erect and, so long as it is engaged in the business of operating a stockyard or a livestock depot, and furnishing stockyards and transportation services at its present location at Cleveland, Ohio, maintain a single track railroad spur or switch connecting the property (of the Grantee, as Trustee) conveyed by the Grantor to the Cleveland Provision Company by deed dated July 14, 1916, and recorded in Volume 1814, page 86, of Cuyahoga County records, with the right-of-way of the Cleveland, Cincinnati, Chicago and St. Louis Railway, so called, reserving unto the grantor:

1. The right at its own expense, whenever it, or its successors and assigns, so desires, either temporarily, from time to time, or permanently to locate or relocate elsewhere upon the property of Grantor, and to substitute for the right-of-way herein specifically granted for the use of the Grantee, any other right-of-way and the tracks now or hereafter placed thereon, whether as now located or from time to time relocated by and at the option of the Grantor, to be used by the Grantee for the interchange of cars between the right-of-way of the Cleveland, Cincinnati, Chicago & St. Louis Railway, so called, and the property of the Grantee, described in the deed from the Grantor to the Cleveland Provision

Company dated July 14, 1916, recorded in Volume 1814, page 86, of Cuyahoga County records. However, no change or relocation of said track shall thereby deprive the Grantee, his successors and assigns, of uninterrupted use of a switch track.

2. The right to tap on either or both sides of any track or tracks placed upon said right-of-way, whether as specifically described or as relocated, and any track or tracks located upon the property of the Grantee conveyed by the Grantor to the Cleveland Provision Company by deed dated July 14, 1916, for such switch tracks as the Grantor, or its successors or assigns, may desire.

3. The right to have the free and uninterrupted use of any track or tracks located upon the property of the Grantee conveyed from the Grantor, to the Cleveland Provision Company by deed dated July 14, 1916, recorded in Volume 1814, page 86 of Cuyahoga County records, so long as such use does not interfere with the business of the Grantee, his successors and assigns.

756 4. The right to grant or refuse the use of said right-of-way and tracks, whether same be the right-of-way specifically described herein or one substituted therefore, to or by all persons, firms, societies, associations, or corporations, and for all purposes, except the Grantee, his successors and assigns, for the common use thereof in connection with the business of the Grantee, his successors and assigns.

To have and to hold said right-of-way and the tracks thereon unto the Grantee, his successors and assigns, as an appurtenance to the aforesaid land of the Grantee, conveyed by deed from the Grantor to the Cleveland Provision Company, dated July 14, 1916, recorded in Vol. 1814, page 86, of Cuyahoga County records, subject, however, to the conditions herein contained.

As a part of the consideration for this grant, the Grantee herein, for himself, his successors and assigns, convenants and agrees to and with the said Grantor, its successors and assigns, that the Grantee, his successors and assigns, shall pay as rental to the Grantor, its successors and assigns, the sum of $2.00 for each loaded car received or shipped over said right-of-way from any plant located on the property conveyed by the Grantor to the Cleveland Provision Company by deed dated July 14, 1916, provided that the maximum monthly rental to be paid by the Grantee shall be $100.00 per month; said rental to be paid monthly within 15 days after the close of each month, provided, however, that during the period in which the Grantee, his successors and assigns, shall engage in the business of slaughtering livestock on said property such rental shall not accrue.

This conveyance is made subject to the following conditions of forfeiture which shall apply only so long as the Grantor, its successors and assigns, is engaged in the business of operating

stockyards or livestock depot, and furnishing stockyards or transportation services at its present location in Cleveland, Ohio:

1. That the Grantee, his successors and assigns, shall not use or grant the use of said right-of-way or tracks for the movement or interchange of cars or live cattle, swine, or sheep.

2. That the Grantee, his successors and assigns, shall purchase at the livestock market conducted by the Grantor, its successors and assigns, or shall receive thru the livestock depot operated by the Grantor, its successors and assigns, all live cattle, swine,
757 and sheep slaughtered on the property conveyed by said deed from the Grantor to the Cleveland Provision Company dated July 14, 1916.

3. That the grantee, his successors and assigns, on said property deeded by the Grantor to the Cleveland Provision Company by deed dated July 14, 1916, and recorded in Volume 1814, page 86, of Cuyahoga County records, shall not erect or use any pens or other enclosures commonly known as stockyards, nor engage in the business of furnishing stockyards or transportation services, including the receiving, handling, feeding, watering, holding, and caring for, buying, selling, weighing, unloading, shipping, or transportation of live cattle, swine, and sheep, except that such pens may be erected and used to the extent necessary to confine any livestock awaiting immediate slaughter in any plant on said property.

If the Grantee, his successors and assigns, shall pay rental when due and shall not violate any of the conditions of forfeiture hereinbefore set forth in the next preceding paragraphs, the Grantor, its successors and assigns, covenants and agrees that the Grantee, his successors and assigns, shall have and enjoy quiet use and possession of said easement. If the Grantee, his successors and assigns, shall fail to pay said rental within 30 days after the same shall become due, or shall fail to perform any or all of said conditions, then it shall be lawful for the Grantor, its successors and assigns, to enter upon the right-of-way or easement herein granted and again have, repossess and enjoy the same and exclude the Grantee, his successors and assigns, therefrom, as fully and completely as if the grant had not been made, and thereupon this grant shall be utterly void and of no effect.

It is agreed by the parties hereto, their respective successors and assigns, that this grant is in furtherance of and in full compliance with the provisions for a 16-ft. right-of-way contained in the deed from the Grantor to the Cleveland Provision Company, dated July 14, 1916, and recorded in Volume 1814, Page 86, of Cuyahoga County records; and that it is a full and complete settlement of all controversies involved in the case of the Cleveland Union Stock Yards Company vs. The Cleveland Provision

Company, et al., No. 15727 in the Court of Appeals of Cuyahoga County.

In testimony whereof, the said Grantor has caused its corporate seal to be hereto affixed, and these presents to be subscribed by its President and Secretary, this 24th day of November in the year 1936.

THE CLEVELAND UNION STOCK YARDS COMPANY,
By A. Z. BAKER, *President*,
PHILIP H. COAD, *Secretary*.

Signed and acknowledged in the presence of:

VIRGINIA WILLIAMS.
M. S. FARMER.

Recorded in Volume 4666, Page 610.

758 *Exhibit No. 58*

Know all men by these presents that this indenture made this 16th day of February, in the year One Thousand Nine Hundred and Thirty Seven between Irving Kane, as Trustee for the Cleveland Provision Company, Debtor, in liquidation under Section 77-B of the Bankruptcy Act, of the City of Cleveland, County of Cuyahoga, State of Ohio (hereinafter sometimes designated as "Grantor"), and Earl C. Gibbs of Cleveland, Ohio (hereinafter sometimes designated as "Grantee"), witnesseth:

Whereas a petition for reorganization of The Cleveland Provision Company under Section 77-B of the Bankruptcy Act was filed in District Court of the United States for the Northern District of Ohio, Eastern Division, on the 15th day of June 1935 and

Whereas an order of liquidation was decreed by the District Court on the 19th day of June 1936, pursuant to Section 77-B (K) of the Bankruptcy Act, and said Irving Kane thereafter was duly appointed Trustee on the 10th day of July 1936, and thereafter duly qualified and has continued to act and is now acting as such Trustee; and

Whereas said Irving Kane as Trustee for the Debtor was duly authorized, after notice to the mortgage bondholders, lienors, and creditors; by an order of Wm. B. Woods, Esq., Referee in Bankruptcy, dated January 19, 1937, to sell and convey the property hereinafter mentioned at private sale, free and clear of liens and free and clear of taxes, or subject to taxes, as the purchaser may elect, and the said sale having been had on January 19, 1937, and thereafter having been confirmed by an order of Wm. B. Woods, Esq., Referee in Bankruptcy, dated the 29th day of January 1937; and

Whereas W. W. Weisman, the purchaser and his successors in

interest, pursuant to the provisions for assignment contained in said contract of sale, have designated Earl C. Gibbs as the party to whom the real estate herein shall be conveyed;

Now, therefore, I the said Irving Kane, as Trustee for The Cleveland Provision Company, debtor, by virtue of the power and authority vested in me as aforesaid, and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, receipt of which are hereby acknowledged, do hereby Give, Grant, Bargain, Sell, Release, Quit Claim, Convey, Assign, and Set over unto the Earl C. Gibbs, his heirs and assigns forever, all my right title, and interest in and to the following described premises:

Situated in the City of Cleveland, County of Cuyahoga,
759 and State of Ohio, and known as being part of Original Brooklyn Township Lot No. 34 and is bounded and described as follows:

Begining at a point in the westerly line of West 65th Street, which marks the intersection of the said westerly line with the northerly line of Storer Avenue.

Thence North 1°15'00" East along westerly line of West 65th Street. 337 feet but to the northeast corner of lands described in Supplemental Indenture to the Cleveland Trust Company from the Cleveland Provision Company recorded in Volume 4306, Page 587.

Thence north 88°45'00" West along the northerly line of lands so conveyed 222.56 ft. to an angle.

Thence South 78°05'50" West, continuing along the northerly line of lands so conveyed 118.76 feet to an angle point which marks the westerly end of lands so conveyed, and is in the northerly line of lands described as Parcel 4 recorded in Volume 2543, Page 608 to 637 between the Cleveland Provision Company and Cleveland Trust Company.

Thence north 88°45'00" West, along the northerly line of lands so described in Parcel 4, 120.09 feet to the northeast corner of lands described in a partial release from the Cleveland Trust Company to Cleveland Provision Company, July 1, 1933, recorded in Volume 136, Page 427. Said property so released now owned by the Cleveland Stock Yards Company.

Thence South 1°15'00" West, along the easterly side of said last mentioned lands so released 1.5 ft. to the southeast corner of said lands.

Thence North 88°45'00" West, along the southerly line of said lands so released 446 feet to the southwest corner thereof, which is also in the westerly line of lands described in Parcel 4 hereinbefore referred to.

Thence South 1°15'00" West along the westerly line of property described in said Parcel 4, 348.18 feet to the southwest corner thereof, which is also in said southerly line of original Lot 34.

Thence east along said southerly line of Lot 34, 137.68 feet but to the west end of Storer Avenue.

Thence north along the west line of said dedication of Storer Avenue, 30 feet to the northerly line of dedication of Storer Avenue.

760 Thence east along said northerly line of Storer Avenue, SW. as so dedicated 764.68 feet to said westerly line of West 65th Street and place of beginning.

The above described parcel of land contains 6.720 acres be the same more or less, but subject to all legal highways, together with right-of-way and easement 16 feet in width over lands of the Cleveland Union Stock Yards Company, connecting the premises above described with the tracks and right-of-way of the Big-Four Railway so called, together with any and all easements, licenses, benefits, and appurtenances attaching to said land, and particularly including the grant of right-of-way or easement conveyed to Irving Kane, Trustee as aforesaid, by the Cleveland Union Stock Yards Company upon the approval of the Bankruptcy Court, which said right-of-way was executed on November 24, 1936, and recorded (2581931), Volume 4666, Page 610, Cuyahoga County records, and together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold the said above granted premises with the appurtenances thereof unto the Grantee, his heirs and assigns forever, as fully and completely as the Grantor can and ought to do pursuant to the Statute and his authority as aforesaid.

In witness thereof, said Irving Kane, as Trustee of The Cleveland Provision Company in liquidation under Section 77–B of the Bankruptcy Act as aforesaid has hereunto set his name the day and year first above written.

IRVING KANE,
Trustee for Cleveland Provision Company, Debtor-in liquidation under Section 77–B of the Banruptcy Act.

Signed in the presence of:
JOHN S. BEARD
IDA R. MCDOWELL.

STATE OF OHIO,
Cuyahoga County, ss:

Before me, a Notary Public, in and for said County
761 and State, personally appeared the above named Irving

Kane, known to me and to me known to be the Trustee for the Cleveland Provision Company, Debtor, in liquidation under Section 77-B of the Bankruptcy Act, and the Grantor in the foregoing deed, he acknowledged that he did sign the aforegoing instrument for and on behalf of the Estate of said Debtor, and that the same is his free act and deed personally and as such Trustee.

In testimony whereof, I have hereunto set my hand this 16th day of February 1937.

IDA R. McDOWELL, *Notary Public.*

Filed for Record: 2-19-37
Recorded: 2-20-37
Volume 4701, Page 129.
Revenue Stamps $67.50.

762 *Exhibit No. 59*

SWIFT & COMPANY
Union Stock Yards
CLEVELAND, O.

JUNE 18TH, 1919.

Personal. File 1379

MR. E. M. COSTIN,
Federal Manager, Big Four Railroad, Cincinnati, Ohio.

DEAR SIR: For about two (2) years we have been working mainly with your Engineer's office at Galion Ohio, and others interested, for the improvement of switching facilities in the Clark Avenue Packing House District, in which the Theurer Norton Company, and Swift & Company, together with the Big Four, are jointly interested.

After the feasibility of the proposition was determined, the Theurer Norton and ourselves, finally obtained a City Ordinance, granting authority to lay the track on a part of the City property, all of which required considerable time, and the interested parties of the proposition are all agreed as to the additions and changes to be made in the track, and the matter has now reached the stage of development where it is status quo, by reason of different interpretations flowing from General Order 15, as modified; it has also been tentatively proposed to settle the expense of maintenance of other tracks that have been installed for several years,
763 but which may possibly be remotely related to the main proposition now under discussion.

The facts relating to the proposed new track are as follows:

The track will begin at a point on the right-of-way of the Big Four and will operate over a right-of-way granted by the City of

Cleveland, and does not strike the property of the shipper until it reaches the Theurer Norton, a distance somewhat in excess of 1,063 feet, on which strip there will be no cars loaded or unloaded, and will be used strictly as a main to reach the Theurer Norton property.

We are interested by reason that under the present track arrangements, the Theurer Norton people are served through a track which this company uses as a loading and icing track, principally an icing track, directly beneath our building, and the business in this territory has increased with such rapidity in the last three (3) years, that the present track facilities are inadequate generally to properly take care of the business without interference in icing and loading, and considerable delay by reason of switching necessary to clear the present track, at least to the Theurer Norton property, so as the Theurer Norton plant may be switched.

The main point at issue is the question of division of expense, as between the carriers and the shippers, which is contingent upon
the application of General Order 15, as modified, and
764 it is the contention of the Theurer Norton and Swift & Company, that the rails in the proposed project will operate over the Railroad property (which belongs to the carriers so long as it is used for Railroad purposes), for a distance of approximately 1,063 feet, where it finally strikes the Theurer Norton property, and therefore, the expense up to the clearance point where the tracks reach the Theurer Norton property, is an expense to be borne by the carriers under General Order 15.

The complications arising from the different views as to the manner in which the General Order 15 is to be applied, prompts us to write you the facts, together with our views on the subject, in hopes that the work of installing the tracks will be hastened and be ready for use before the heavy killing season is reached.

In the event of a prolonged discussion concerning the expense angle of the subject, it is our recommendation that the actual work of laying the tracks be started, and when the controversy reaches a stage of agreement, we can then arrange an actual financial settlement, on whatever basis is jointly agreed to between the
shippers on the one hand and the Big Four on the other.
765 There is no controversy between the percentage of expense to be borne between the Theurer-Norton and Swift & Company, but the sole issue is between the shippers on the one hand and the Big Four on the other.

Please reply.

Yours respectfully,

SWIFT & COMPANY.

Trans. Dept.
HLG: MS.

Per H. L. GALLEN.

766 *Exhibit No. 60*

54

JULY 7, 1919.

Track changes, Clevd.

Mr. H. L. GALLAH,
Traffic Mgr., Swift & Co.,
Cleveland, Ohio.

DEAR SIR: Your letter of June 18, file 1379:

I have had this matter investigated and find that yourself and the Theurer-Norton Company desire some track changes, which, on the present plans, involve the construction of an additional track, to be known as No. 4, about 1,233 feet long, and the shifting of some tracks with a cross-over track, to be known as No. 3, 220 feet long, involving an expenditure of $6,550.

Under General Order 15 and supplements, the railroad cannot justify the Director General paying any portion of this expense. These tracks are purely for the benefit of the concerns mentioned, and the major benefit is for Swift & Company, who, by reason of these changes, expect to enjoy the full use of track No. 2. We understand Theurer-Norton agree to assume their proper proportion of this expense, but your people are expecting the railroad and Theurer-Norton to assume practically all the expense. This is a matter that will have to be decided between you people. The Administration will be very glad to do the work at your expense.

Yours very truly,

E. M. COSTIN, *Federal Manager.*

767 *Exhibit No. 61*

SWIFT & COMPANY
Union Stock Yards
CLEVELAND, O.

JULY 16th, 1919.

Personal.

Mr. E. M. COSTIN,
Federal Manager, C. C. C. & St. L. R. R.,
Cincinnati, Ohio.

DEAR SIR: We have your letter of July 7th, subject Track Changes Cleveland, and in response thereto we may properly state that the information upon which some of your letter is based is not entirely correct as the attitude of the Theurer-Norton Company and Swift & Company is uniform, and we have

suggested to the Theurer-Norton Co. to go on record that such is the case.

We also differ entirely with the statement that the benefit is confined to the shippers, chiefly Swift & Company. It is our opinion that the initiative in this particular case should have been on the part of the railroad instead of the shippers, as it is largely a case of switching facilities and not sidetracks that brought up the question originally, and the proposition still remains a question of switching facilities, and if the carriers are able to switch the Theurer-Norton plant in less the time it now takes, most assuredly it cannot be stated that the railroads are receiving but minor benefits. In fact, in our judgment, the carriers will be benefited more so than the shippers, as speaking, for Swift & Company, we do not now and will not after the proposed tracks are installed, enjoy full use of track No. 2 for the reason that there are other in-
768 dustries being served by this track which the new track will not reach, but we admit some benefit by reason of our loading not being disturbed as often as it is now, but invariably the Theurer-Norton plant is switched about the same time switching is performed at our plant, so manifestly the benefits accruing to Swift & Company are not as great as one might anticipate. However, we are interested generally in the enlargement of the track facilities serving the packing plants, and it is a common knowledge to all those familiar with the track lay-out that some improvement should be made wherever possible so as to properly take care of the present business and then keep in step with the increased production, and therefore increased shipping, of the industries.

We write this without any thought of criticism on the part of the carriers as the switching lay-out was originally forced upon the carriers and the shippers served by the present tracks, and, therefore, neither the shippers nor the carriers are at fault, but it is our position that wherever the situation can be improved upon appropriate action should be taken in the premises.

It is our understanding that General Order 15 would permit the carriers to install at their own expense the switch lead on your own right-of-way, which in this particular case involves a distance of about 1,063 feet, providing the business is sufficient, and undoubtedly the business is sufficient.

The track laid beyond 1,063 feet will be utilized more or less by the Theurer-Norton people and the expense of installa-
769 tion for the changes and etc. beyond 1,063 feet will be absorbed by the shippers.

This, in our judgment, would be in keeping with a sane business policy on the part of the participants, and trust you can be prevailed upon to acquiesce in this arrangement.

Permit us to reiterate what was stated in our previous communi-

cation to you in reference to delay in connection with the matter under discussion; namely, if we are entering a prolonged discussion delaying the execution of the physical phase of the subject, it is our recommendation that material be placed on the ground and that actual work be started, by which time, undoubtedly, some agreement will be reached dealing with the expense phase of the subject.

Please reply.

Yours respectfully,

SWIFT & COMPANY,
Per H. L. GALLEN.

Trans. Dept.
HLG:D.

772 Before the Interstate Commerce Commission

Docket No. 28714

SWIFT & COMPANY, COMPLAINANT

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., DEFENDANTS

Reporter's transcript of oral argument

HEARING ROOM "B,"
INTERSTATE COMMERCE COMMISSION BUILDING,
Washington, D. C., Friday, June 4, 1943.

The above-entitled matter came on for oral argument before the Commission at 10 a. m.

Present: Comissioners Alldredge (Chairman), Aitchison, Porter, Mahaffie, Miller, Splawn, Patterson, and Johnson.

Appearances: R. D. Rynder, 4115 Packers Avenue, Chicago, Illinois, for complainant. Robert R. Pierce, 1324 West Third Street, Cleveland, Ohio, for New York Central Railroad Company and other Cleveland carriers. C. B. Heinemann, 701 McLachlen Building, Washington, D. C., for The Cleveland Union Stock Yards Company.

774 PROCEEDINGS

Chmn. ALLDREDGE. No. 28714, Swift & Company against The Baltimore & Ohio Railroad Company, et al.

Mr. PIERCE. Mr. Chairman, my name is Pierce; I represent the defendant railroad carriers here and I find myself in the position, an oversight having been made, of not having asked for time for argument, and if it is possible that we could be heard we would appreciate it.

Chmn. ALLDREDGE. Are you the only one?

Mr. PIERCE. For the railroad defendants; yes, sir.

Chmn. ALLDREDGE. How much time do you wish?

Mr. PIERCE. 15 minutes.

Chmn. ALLDREDGE. All right. I hope you gentlemen will keep in mind the fact that the Commission's engagements are based upon the amount of time allotted here for argument. It is really disconcerting to us sometimes to have these special requests brought in on us.

Mr. PIERCE. It is wholly an oversight on my part.

Chmn. ALLDREDGE. All right.

What are your initials?

Mr. PIERCE. R. R.

Chmn. ALLDREDGE. Mr. Rynder.

Oral argument of Mr. R. D. Rynder on behalf of complainant

Mr. RYNDER. May it please the Commission, I am repre-
775 senting the complainant and the case is here for argument on exceptions filed by the complainant to the report of the examiner.

I think I have here today a case that is at least interesting and which, after the facts have been sufficiently elucidated, will present to you a rather simple but interesting question of law.

I may anticipate in stating that question in somewhat the following manner:

Whether the lessor of a piece of track, a lessor to a line-haul railroad, the New York Central, which uses the leased track for its general railroad operations, may withdraw the use of that track in the hands of a common carrier and thus bring about what would plainly be violations of the Interstate Commerce Act if the same course of action was pursued by the carrier upon its own track.

In order to make it easier for you to visualize the situation I have placed here very roughly some lines which show the track locations.

A more accurate setting forth of these tracks, and so forth, is found on, I believe, exhibit 1 in this case.

At Cleveland, Ohio, coming along in an easterly and westerly direction, we have here what I may call a main line of the New York Central, owned and operated by the New York Central. Upon that main line at approximately the location I have marked here are three packing-house plants operating in compe-
776 tition with the Swift plant in the same general neighborhood: the Cleveland Provision Company, the Lake Erie Dressed Beef Company, and the Ohio Provision Company.

Running off from the track of the New York Central, at which I am now pointing, and which serves the tracks of these three packing-houses we have 132 feet of track owned by the New York Central, along track 245.

Then for a distance of 1,619 feet the track is owned by The Cleveland Union Stock Yards Company and leased to the New York Central.

At the end of that 1,619 feet we come again to track owned and operated by the New York Central and at approximately the point I have marked a sidetrack comes out, which comes around in somewhat this direction to the plant of Swift & Company, which is across the street from the stockyards property.

Commr. PORTER. Pardon me. Is the stockyards itself in about where that track is, Mr. Rynder?

Mr. RYNDER. I think Mr. Pierce will correct me if I am wrong, but I would put the stockyards—the line of the stockyards property would be about the line I am putting it. Wouldn't it?

Mr. PIERCE. The street line?

Mr. RYNDER. The street line.

Would this be 65th street?

Mr. PIERCE. 63d.

777 Mr. RYNDER. 63d Street. And the line of the stockyards property, as I understand it, comes to the east side of 63d Street.

Commr. MILLER. West side, if your compass is right.

Commr. JOHNSON. West side.

Mr. RYNDER. The west side of the street, but the east side of the property. The west side of the street.

The Swift & Company property is on the opposite side of the street from the stockyards property.

That is the physical lay-out.

One point that I would like to emphasize in connection with that is that the 1,619 feet leased from the stockyards forms no part of the Swift & Company sidetrack, to which I am directing your attention now.

The Swift & Company sidetrack connects with the industrial track and has nothing to do with the 1,619 feet owned by the stockyards.

Commr. MILLER. But it is leased by the New York Central; is it not?

Mr. RYNDER. Yes, sir; leased by the New York Central from the stockyards.

For many years—I cannot tell you how many—the New York Central delivered over this track to the Swift & Company plant all classes of freight, including livestock. What the origins of the agreements were or just what they were I do not

778 know, although I have made a diligent effort to find out.

In 1928, I believe, those agreements—and, by the way, we have had our plant there since 1905—in 1928 there was a lease made by and between the parties which on its face shows that it was simply a continuation or reduction to writing of former agreements which may or may not have been written. That lease in its entirety appears at page 21 and following pages of the opening brief.

In 1935 the stockyards company insisted, I guess to the railroad company, upon modifying that lease so as to provide that this 1,619 feet of track could not be used for what they called competitive traffic.

However that may have been, the railroads in 1938 modified their tariffs so as to provide that livestock would not be switched by the New York Central to the Swift & Company plant.

There were a number of things which intervened, and presently we filed a complaint seeking to have that service restored.

Since 1938, November the 12th, the New York Central has refused to deliver livestock to the complainant's track and the complainant's plant over these tracks and there is no other way of reaching the plant.

It has continued to deliver and take from the plant all other classes of traffic, but, obviously, if the stockyards can stop the delivery of livestock over that track it can exercise the same

179 powers as to all other traffic and, if it was so inclined, could close the plant, for a plant of that kind cannot operate without rail connection.

Commr. MILLER. Do you get the livestock in now?

Mr. RYNDER. Sure.

Commr. MILLER. Do you get any livestock in now?

Mr. RYNDER. Because it cannot be delivered to our plant it must all be delivered in the stockyards and then we have to get it through the stockyards facilities, bringing it back across the street to the plant.

Commr. MILLER. Drive it in?

Mr. RYNDER. Yes, sir.

Commr. MILLER. On the hoof?

Mr. RYNDER. On the hoof.

Commr. MILLER. Yes.

Mr. RYNDER. And in a decision of your Honors that reached me just about a week ago, in No. 28421, you have held that the shipper of livestock at Cleveland is not entitled to cross without extra charge, so I assume that with the effective date of that order we will not only have to take delivery of the livestock in the stockyards but will have to pay a yardage charge in order to get it out and across the street.

I hardly believe that the defendants will disagree with me if I suggest that but for the nonownership of this track by the New York Central we would have here a clear violation of certain provisions of the Interstate Commerce Act.

780 In other words, we would have violations of the Interstate Commerce Act that would never have been effected by the railroads had the property belonged in its entirety to the railroads.

First, we have been deprived of a customary and usual delivery which had been made for many years, and which, I belive, without some valid excuse, would be a violation of section 1 (3) of the act.

Secondly, ——

Commr. PATTERSON. Was there ever a time when you brought all of your livestock into the Swift plant by rail?

Mr. RYNDER. There has never been a time when we brought all of it in; no, sir.

Commr. PATTERSON. You have always used the stockyards?

Mr. RYNDER. For a part of it.

Commr. PATTERSON. What facilities do you have in the plant for handling livestock?

Mr. RYNDER. Adjacent to this track we have at present eight large pens, but, as the record shows, and the oral testimony, the land in the general direction south of this track is substantial, and is owned by Swift & Company, and is vacant—the land immediately between the stock pens and the south.

Commr. PATTERSON. Have you always had eight pens in there, since 1905?

Mr. RYNDER. Sir, I am not sure about the exact number

781 of pens.

Commr. PATTERSON. Well, have you increased the facilities there quite recently for unloading livestock in your plant?

Mr. RYNDER. Certainly not since we could not get it delivered. I am merely pointing out that if we can get a delivery of livestock at our plant we need only to build more pens in order to increase indefinitely the amount that we can take at our plant.

Commr. PATTERSON. Well, do you drive your livestock now across the street, into those eight pens?

Mr. RYNDER. I think that probably under present conditions we drive the livestock that has to be delivered in the stockyards directly into the portion of the plant where it is to be slaughtered. The pens are primarily for holding the stock until you can drive it to the slaughter floor.

Commr. PATTERSON. That is the same use to which you put the stockyard company's pens for some time past?

Mr. RYNDER. For some time past.

Commr. MILLER. That New York Central line from your switch;

where does that get back into the connection with the New York Central again?

Mr. RYNDER. This is the New York Central, sir.

Commr. MILLER. Yes; but does that connect onto the main
782 line so they could deliver stock cars to you?

Mr. RYNDER. No, sir.

Commr. MILLER. Without going to the stockyards?

Mr. RYNDER. No, sir; they would have no means of bringing it around to the south here.

Commr. MILLER. It goes to a dead end, that branch; does it?

Mr. RYNDER. I believe that is a dead-end line.

Commr. MILLER. Oh, yes; I see.

Mr. RYNDER. And the livestock has to be brought in over the main line, coming up in this direction.

Commr. MILLER. And has to go across that 1,619 feet?

Mr. RYNDER. It has to cross it. As I understand it, there is no other means of reaching our plant than this track 245, of which 1,619 feet is owned by the stockyards.

I do want to make the point, if I have not sufficiently made it, that we would have here a clear violation of the Interstate Commerce Act, unless there is a valid excuse.

For one thing, the railroads would be depriving us of a customary and normal delivery that they have been making for many years.

Second, there would be a discrimination between commodities, because the railroads now take in to our plant and take from our plant everything necessary for its operation, such as supplies,
in-bound coal, lumber—everything of that kind, and
783 meat products out-bound; everything except livestock. We have a commodity discrimination there.

The record is undisputed about the point that, using their own facilities, the railroads switch livestock to the three competitive packing plants, just as they switched it formerly to our plant, so that you have a discrimination under section 3 as between three competing plants.

And the examiner finds the facts as I have stated them with respect to those three plants.

Commr. PATTERSON. Did you answer my question as to whether the facilities in the plant for storing livestock have been increased since this controversy arose?

Mr. RYNDER. Have been increased?

Commr. PATTERSON. Yes; the storage for livestock within your plant.

Mr. RYNDER. Sir, my impression is that they have remained the same; but I am not sure whether the record has any testimony on that.

Mr. PIERCE. I think the record is silent on it.

Mr. RYNDER. I think the record is silent on it, probably, but my impression is that it has remained the same.

Commr. MILLER. Who furnishes the unloading pens on the New York Central to these three competitors?

Mr. RYNDER. The industries, as I understand it.

Commr. JOHNSON. They have private sidings?

784 Mr. RYNDER. They have private sidings; each one of them has a private siding to unload upon, just as we have a private siding to unload upon.

Commr. JOHNSON. How much right-of-way does the New York Central own on its main line?

Mr. RYNDER. I do not know; Mr. Pierce may.

Mr. PIERCE. About 100 feet wide.

Commr. JOHNSON. Over all?

Mr. PIERCE. 50 feet on each side.

Commr. JOHNSON. 50 feet on each side?

Mr. PIERCE. I think that is right. There are four main tracks in there, Mr. Commissioner.

Commr. JOHNSON. These industries have private sidings which connect with the main line of the New York Central?

Mr. PIERCE. There is a direct connection.

Mr. RYNDER. So, I say that we have a prima facie case at least of violation of the Interstate Commerce Act and the question of whether or not an excuse exists because this 1,619 feet is leased by the New York Central from the stockyards.

The examiner, I think, finds all of the facts that I need for my case, but dismisses the complaint solely upon the ground of non-ownership of the track by the New York Central.

On sheet 3 of the proposed report the examiner says:

"Defendants cannot transport livestock to complainant's siding except by using track No. 245. Under the circumstances described"——

785 Parenthetically, that is just as I have described it—"the line-haul defendants are under no obligation to transport shipments of livestock to the sidetracks at complainant's plant."

The examiner does not discuss whatever law there may be on one side or another of that proposition.

Now, my point is that the examiner has failed to consider the definition of a railroad in section 1 (3) of the act, which provides:

"The term 'railroad' shall include all tracks in use by any common carrier"——

And this track is in use by a common carrier. And then: "whether owned or operated under a contract, agreement, or lease."

* * * "whether owned or operated under a contract, agreement or lease"!

This 1,619 feet is not owned but is "operated under a contract, agreement, or lease"; the New York Central having obtained it in that way, it has, by the definition in section 1 (3), become a part of the New York Central Railroad and, as I contend, under that section of the act it becomes a part of this railroad which may not be used unlawfully to discriminate in violation of other sections of the act.

Chmn. ALDRICH. Your position, then, is that that is not a private siding for the service of the stockyards but has been
786 dedicated to public use and is a part of the railroad facilities; is that right?

Mr. RYNDER. I think Mr. Pierce will agree with me that it is not a part of the private siding to the Swift plant.

Mr. PIERCE. It is the missing link between the New York Central and the Swift track.

Mr. RYNDER. And it intervenes between two what I might call public tracks.

Commr. PATTERSON. Does the New York Central serve any other industries except Swift over this particular track?

Mr. RYNDER. Another small packing plant adjacent to our plant.

Commr. MILLER. Is that the only purpose of that 1,619 feet? To get through there? Is that track used for any other purpose except to get over to your siding?

Mr. RYNDER. I am not informed as to what other uses the New York Central may make of it, if any.

Commr. MILLER. But was it used for stockyards purposes?

Mr. RYNDER. I know from looking at it that it could be; whether it is or not I will have to leave to the defendants.

Mr. PIERCE. Well, I can answer that question.

Cmmr. JOHNSON. Is that other small plant down there receiving livestock over No. 245?

Mr. RYNDER. Not since the deliveries have been stopped. We understand that it did before that time.

787 Commr. JOHNSON. Not since that time? When Swift & Company failed to receive livestock they failed to receive livestock?

Mr. RYNDER. Yes, sir.

The sidetracks serves both plants in and out with everything except livestock now.

The first exception I have noted, in addition to the one as to the definition of a railroad, is that the examiner erred in failing to note that The Cleveland Union Stock Yards Company is a defendant to the complaint and in treating the complaint solely as if it was directed against the line-haul carriers. In the second sentence of the report the examiner says:

"It is alleged that the failure and refusal of the line-haul de-

fendants to deliver carload shipments of livestock" and so forth.

At the time I drafted this complcint I knew pretty well the facts that have been brought out would be brought out and I made the stockyards company a defendant at that time, knowing that, knowingly and willfully. I believed that I had a right to do that under section 2 of the Elkins Act, which provides, in substance, in any proceeding for the enforcement of provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Commission or in a District Court, it shall be lawful to include as parties all persons interested in or affected by the regulation or practice under consideration,
783 and orders may be made with reference to and against such parties in the same manner and to the same extent and subject to the same provisions as are or shall be authorized by law with respect to carriers.

I have cited in my exceptions all the cases I could find decided under that section of the Elkins Act; you will find them at page 12 and a couple of pages following of my exceptions.

I believe they amply support the proposition not only that The Cleveland Union Stock Yards Company, the party here preventing this delivery, is a proper party defendant—and I made it a party defendant—but also that the Commission may make any order against The Cleveland Union Stock Yards Company necessary to prevent a violation, a clear violation, of the various sections of the Interstate Commerce Act.

You were upheld in making, for one thing, an order of that kind against a carrier which had ceased to be a carrier and sold its property before you made a reparation order. In the Spencer-Kellogg case Spencer-Kellogg, neither a receiver nor a shipper of the traffic involved, was enjoined from making itself the avenue for a rebate although it was not a common carrier by railroad and was not the shipper of the property involved.

I desire particularly to emphasize that point because I believe that you have the power here to make an order requiring conformity with the provisions of the act not only against the
789 New York Central but also against The Cleveland Union Stock Yards Company as the owner of this track and as a party defendant which has required its codefendant to violate the act.

Commr. MAHAFFIE. Could we prevent The Cleveland Union Stock Yards Company from removing the track?

Mr. RYNDER. Well, that is a question we do not have to face in this case.

Commr. MAHAFFIE. I thought it was somewhat analogous to directing the use that it might permit to be made of it.

Mr. RYNDER. I have some ideas upon that, Mr. Commissioner.

I believe that that track has been dedicated to a public use for so many years that the stockyards has lost the right to treat it as its own property. That would be upon the theory of dedication.

I have searched those cases pretty well. I have mentioned some of them in my exceptions and one of them says distinctly that a dedication of property for station purposes for a certain period prevented that owner from taking back the property and selling it.

So, to answer the technical question, I believe it could not be done, upon the theory of dedication to public use; but we are not quite up to that point in this case because the stockyards has not withdrawn the use of this track. It is still under lease to
790 the New York Central and what might happen if the stockyards withdrew the use of that track completely would be another chapter.

Commr. MILLER. But they have put in a condition as to how it should be used or for what purpose, in their contract: that it cannot be used for hauling livestock.

Do you contend that they cannot put the condition in?

Mr. RYNDER. That is what I am contending.

Commr. AITCHISON. In other words, that contract has stamped in red ink all over its face that the subject-matter of this contract is being regulated by page 1, title IL, of the United States Code, and it is distinctly understood by all parties that all terms and conditions of this contract are subject thereto.

Mr. RYNDER. You have stated it much better than I could, Mr. Commissioner.

Commr. JOHNSON. Do you contend that an owner who leases his property for postoffice purposes could not after 20 years refuse to lease it further on the theory that it had been dedicated to public use?

Mr. RYNDER. I am not sufficiently acquainted with the postoffice statutes.

Commr. JOHNSON. Well, you are talking about dedication to public use.

Mr. RYNDER. I am, sir.

Commr. JOHNSON. Do you contend an owner cannot pro-
791 hibit the using of his property for public use when he rents it to another man, who dedicates it to public use under a contract? That is permissible; isn't it?

Mr. RYNDER. Not necessarily.

Commr. JOHNSON. Would you think it a proper condition that the owner of property leased to the post office would attempt to put a clause in the contract that the Government could not transport newspapers through that office?

Mr. RYNDER. Well——

Commr. AITCHISON. Well, couldn't it?

Mr. RYNDER. I would say that if he leased that property to the post office for post office purposes and then said, "Mr. Postmaster, you cannot deliver any more through this post office to R. D. Rynder," he would step beyond the bounds of what he could do.

Commr. JOHNSON. But he could enforce it when the lease matured.

Mr. RYNDER. I don't believe he could.

Commr. JOHNSON. He could refuse to rent in in the future.

Mr. RYNDER. Oh, you mean after his lease expired.

Commr. JOHNSON. Sure.

Mr. RYNDER. Well, I think we have not reached that point here.

Commr. JOHNSON. Well, then, suppose the Government agreed to the condition being put in the lease even before maturity.

792 Mr. RYNDER. I hope you will excuse me, because I am getting too far afield and I need my time.

I believe all the authorities support me in the proposition that the use of this property is a public use by the railroad.

One of the leading authorities on that is Union Lime Company v. The Chicago & North Western, 233 U. S. 911. I do not need to quote that to the Commission except to state that it was a case where the railroad was trying to take by eminent domain private property for use as a spur track. You will find it quoted at pages 19 and 20 of my exceptions.

The Supreme Court held that such use of the property was a public use and that the land could be condemned for that purpose.

Upon that, too, we have cases from various supreme courts of the various States, practically all to the same effect. I have quoted several of them in my exceptions and will not take your time now to read them, but I would like particularly to call your attention to the decision in Morgan Run Railway Company v. Public Utilities Commission, 120 Northeastern, 295, because that case was decided by the supreme court of Ohio, the State in which this particular track is located; and I believe it presents a factual situation so similar that it would be a strong authority in my favor in this case.

The statute under which the case was decided is quite similar to the Federal statute in its definition of a railroad;

793 and that court said in its conclusion:

"Again assuming, for the purposes of this case, that the coal company owns the portion of the railroad claimed by it"—Just as the stockyards here—"and that the coal company itself made up the deficiency in the cost of operating the railroad, still the railway company has no right to make the discrimination found by the commission to be made. It is not a question as to the

right of the railway company to take and use the lands or property of the coal company without consent and without compensation. It is a question as to the right of a corporation, having all the rights and subject to all the duties and obligations of a common carrier, to operate its own line for the exclusive benefit of the coal company and to use the coal company's line over the coal company's property with its consent to transport its coal to and over the company's railway line, all to the exclusion of the general public or those who have the right to equal shipping privileges.

"We therefore hold that as long as the railway company operates any portion of the railroad in question it must do so without discrimination in favor of any shipper. This is a small and unimportant railroad, whose operations are very limited; but the questions that are brought into court for consideration are not limited. They affect every common carrier. If this
794 company may arbitrarily select those whom it will serve any company may do so."

Now, in the remainder of my exceptions I have gone into some of the cases dealing with dedication to a public use. I believe that is going further than I need to in this case, for we aren't faced yet by any action by the stockyards of withdrawing this track from use except for the transportation of livestock.

Chmn. ALLDREDGE. Do I correctly understand—Have I a correct understanding of your case, that it turns on the question of dedication?

Mr. RYNDER. I do not think so.

Chmn. ALLDREDGE. You do not think so.

Mr. RYNDER. I do not think we have reached that point yet because the stockyards is not withdrawing the track from railroad use; it is saying to the railroad, "You may continue to use this track but you may not use it to switch livestock to Swift & Company."

Chmn. ALLDREDGE. What I have in mind is whether or not that track in there has been subjected to public use to such an extent that it becomes not a private sidetrack but a part of the New York Central Railroad. Is that right?

Mr. RYNDER. That is my contention, sir.

Chmn. ALLDREDGE. So, in that sense, you contend that the track has been dedicated to a public use.

Mr. RYNDER. Yes, sir.

795 Chmn. ALLDREDGE. And, having been so dedicated, it must be used nondiscriminatorily; is that right?

Mr. RYNDER. That is true, sir.

Chmn. ALLDREDGE. It would be different if it were a purely private sidetrack?

Mr. RYNDER. Well, if we were dealing with the private side-

tracks to the Swift plant instead of a part of what I shall call a general terminal facility of the New York Central, yes, I think we would have a different case.

Commr. PATTERSON. Do you think the New York Central would require authority from this Commission to take that track out?

Mr. RYNDER. Sir?

Commr. PATTERSON. Do you think the New York Central would require authority from this Commission to take that track out?

Mr. RYNDER. I think it would be an abandonment, if we had reached that point; it would require permission, I think. But, as I understand, your cases on abandonment do not go generally to cases like this, but simply where a complete operation has been suspended.

Chmn. ALLDREDGE. Well, that track 245, and particularly the segment of it on the stockyards property, if it were considered a part of the sidetrack the same as the Swift track and the tracks serving those other packing plants, then you would not contend, would you, that the stockyards company could not condition its use to somebody else?

796 Mr. RYNDER. Oh, if it were a private sidetrack I fancy we would not have this case at all; if it were a private sidetrack I fancy we would be leasing it from the stockyards.

Chmn. ALLDREDGE. Could you state how long that track has been in there serving the parties it is now serving?

Mr. RYNDER. I do not know, sir, but we purchased that plant—and everything was there at that time—in 1905. How long it may have been there before that I do not know.

Chmn. ALLDREDGE. Well, track No. 245 was in operation at that time?

Mr. RYNDER. Yes, sir.

Commr. PATTERSON. This other little plant that is down beyond your plant is not in here complaining; is it?

Mr. RYNDER. No; he has not. And I have heard, although it certainly is not in this record, that he was sort of squeezed out of existence by ceiling prices.

Mr. PIERCE. On that I am not informed, Mr. Rynder.

Mr. RYNDER. Neither am I. That is just a rumor and not in the record.

Commr. ATTCHISON. Are you asking us to proceed under our power under section 1, paragraph 9?

Mr. RYNDER. Oh, in my opinion, I think that is not involved here because our connection has been made with the New York Central and there seems to be no question as to the desire

797 or willingness of the New York Central to serve us if it may do so.

Commr. ATTCHISON. Well, may I call your attention to this——

Mr. RYNDER. Sir?

Commr. AITCHISON. May I call your attention to this section 1, paragraph 9, again, because it relates to the furnishing of cars for the movement of traffic without discrimination?

Mr. RYNDER. I may be wrong, Mr. Commissioner, but I had assumed that that applied to a situation that had already been——

Commr. AITCHISON. Well, read the second part: "If any common carrier will fail to install and operate any such switch or connection" and so on and so forth, "such shipper may make complaint to the Commission" and we have power under section 13.

Mr. RYNDER. I believe we could have done that if that set of facts was there, in order to put in the sidetrack, but the sidetrack is there.

Commr. AITCHISON. Well, they are failing to operate it.

Mr. RYNDER. They are failing to operate it with respect to livestock.

Now I should like to save what time I have for reply and to conclude this argument merely with a brief summary of what I have already stated:

The 1,619 feet we are talking about is, under the Interstate Commerce Act, included within the definition of a railroad
798 and so long as the railroad leases it it must be operated without discrimination and in accordance with the performance of its customary duties.

Under the Union Lime Company case the use of this track makes it a part of the carrier's terminal facilities and not a part of any sidetrack or private sidetrack and subject to such orders for conformity with the law as this Commission may make.

The mere fact that this part of this track, which, so far as a shipper is concerned, is a part of the main-line track, is leased from an individual affords the railroad no excuse for discrimination in service over that track.

Lastly, if the question should be reached, that that track has through these many years been dedicated to a public service and cannot be withdrawn.

I thank the Commission.

Chmn. ALLDREDGE. I wish you would, during the interval here, give some thought to the question asked you by Commissioner Aitchison, whether or not your complaint does not finally center on the refusal to give you switching service over this track, this private sidetrack, under section 1 (9).

Mr. RYNDER. Well, we have the physical connection; we do not have to apply for the physical connection under section 1 (9).

Chmn. ALLDREDGE. But they refuse to service your plant as to livestock.

799 Mr. RYNDER. And if the question arises in your delibera-

tions I believe you will find that our complaint is broad enough to ask for it, to ask specifically for the restoration of this switching service for livestock.

Commr. AITCHISON. You do not have to mention the part of the act.

Mr. RYNDER. No, sir. That is the point I am trying to make: that our complaint is broad enough to cover that if you believe that it falls within that section.

Chmn. ALLDREDGE. Mr. Heinemann.

Oral argument of Mr. C. B. Heinemann on behalf of The Cleveland Union Stock Yards Company

Mr. HEINEMANN. Mr. Chairman and gentlemen, I appear on behalf of Mr. Baker, counsel for The Cleveland Union Stock Yards Company. Mr. Baker came down here yesterday under the misapprehension that his argument was yesterday, and, having previously made arrangements to go to Chicago, he has asked me to substitute for him and present his argument here today. I know that I cannot do it as well as Mr. Baker but I shall do the best I can under the circumstances.

The Cleveland Union Stock Yards Company is the owner of certain land and tracks, particularly the track designated as track No. 245, which has been used by the New York Central Railroad in switching freight to and from the plant of Swift & Company in Cleveland.

800 The use of this track was granted to the railroad under an industry-sidetrack agreement dated June 16, 1924, and under an amendment effective February 1, 1935.

Now, had I been drawing this map or plat Mr. Rynder has on the board here, I think I would have drawn it a little bit differently, for it swings around and this track runs almost due south to the Swift & Company plant, and that plant is between 63d and 65th Streets.

That, however, is immaterial.

As I say, the use of this track was granted to the railroad under an agreement dated June 16, 1924, and unquestionably that agreement succeeded an earlier agreement, of which we have been unable to find any copy.

Commr. JOHNSON. It was an original lease? For what term was it leased?

Mr. HEINEMANN. The 1924 lease was a lease under an arrangement whereby it continued in effect until either side gave notice.

Commr. JOHNSON. Until either side gave notice to terminate?

Mr. HEINEMANN. That is right, sir.

Now I think the Commission can and has taken judicial notice

of the fact that in the earlier years, particularly in the earlier years of the Commission, the matter of sidetrack agreements
801 was more or less entirely out of uniformity and in some cases they had them and in other cases they did not have them.

The Commission has undertaken to correct that situation and I think as a result of their efforts this was possibly one of the cases where they reduced to writing earlier agreements and more or less written agreements, some of which were far from complete.

Commr. JOHNSON. Who gave notice in this instance which was the inception of this matter?

Mr. HEINEMANN. The Cleveland Union Stock Yards Company, sir, the owner of this track about which we are talking.

Commr. MILLER. Did this new agreement have the same expiration date?

Mr. HEINEMANN. The new agreement may be terminated on notice; yes, sir.

Commr. JOHNSON. From either side?

Mr. HEINEMANN. Yes, sir.

The stockyards company owns no motive power and performs no services in connection with the movement of cars of freight over this track to or from the Swift plant.

The examiner has proposed a report which, with the proposed findings, is supported by the facts.

None of the defendants filed exceptions to the proposed report. The complainant has filed exceptions based in part upon its construction of certain statements in the proposed report
802 which, perhaps, should be clarified.

Now I may state that the Livestock Terminal Service Company was a party defendant but it has never had the slightest to do with our tracks; they were not leased to it; they were not owned by it; they have never been used by it.

On sheet 2 of the proposed report the examiner says: "No agreement as to the amount of charge (for the use of the tracks for livestock) was reached."

And again, on sheet 3, in the last paragraph: "There is no agreement permitting its (track No. 245) use by the line-haul defendants for the transportation of livestock."

And still further, on sheet 4, in the first paragraph: * * * "Its use to transport livestock is not allowed."

And in the last paragraph of sheet 4: * * * "the evidence definitely shows that the line-haul defendants are not permitted to use the only track over which it is physically possible to deliver shipments of livestock to the siding of complainant's plant."

While it may be that there was no formal, written agreement as

to the charges for the use of the track in question for delivering livestock to complainant's plant it cannot be said that the use was not permitted or allowed.

These are the facts:

The track in question was used by the New York Central
803 Railroad during the period from June 16, 1924, to November 12, 1938, for delivering livestock to complainant's plant.

The sidetrack agreement of June 16, 1924, under which the track was used, provided for the free and uninterrupted use of the track by the railroad upon certain specified considerations and also provided for termination of the use upon 30 days' written notice by either party.

On December 3, 1934, the stockyards company advised the railroad of its purpose to limit the free use of the track to traffics not competitive with the company's business and in accordance with the provisions of this agreement notified the railroad of the termination of the agreement 30 days after the date of the letter.

In the same letter the stockyards company made the following offer:

"After the termination of 30 days on any livestock handled direct to the unloading chutes of slaughterers in Cleveland over the tracks and/or land of this company we will charge and expect you to pay us the charge named in our tariff No. 5 applicable to livestock consigned direct to packers and not offered for sale; which charge is at present:

"20 cents per head on cattle,
"12½ cents per head on calves,
"7½ cents per head on hogs,
"5 cents per head on sheep."

804 On January 11, 1935, the stockyards company reiterated its offer, which has never been withdrawn.

Effective February 1, 1935, 30 days after the notice of termination, the agreement of June 12, 1924, was amended so as to grant to the railroad the free and uninterrupted use of the track "except for competitive traffic, a charge for which use shall be the subject of a separate agreement."

So far as the stockyards company is concerned, it has had since February 1, 1935, a continuing offer to permit the use of this track for delivery of livestock upon the payment of the specified charge.

In other words, Mr. Commissioners, the stockyards company has not refused to permit the deliveries of livestock over this track.

The complainant has prepared and filed a very novel exception to the examiner's proposed report; counsel has based his argument upon the assumption that the track owned by the stockyards company could not be used by the railroad under any circumstances.

As a matter of fact, the record shows that the only thing that was not permitted was the free use of the track, for delivery of livestock.

Complainant in its introductory statement states that the stockyards company notified the railroad defendants that the track owned by the stockyards company might no longer be used
805 to transport livestock to complainant's plant. As has been pointed out, no such notice was given.

It is appropriate to note here that the use of this track by the New York Central Railroad did not end on the effective date of the notice, February 1, 1935, but continued for more than three years longer, until terminated by the action of the railroad in amending its tariff.

On page 8 complainant makes the novel claim that the actice of The Cleveland Union Stock Yards Company in granting the use of a switch track to the New York Central Railroad for a specified consideration named in a sidetrack agreement constituted dedication of this track to the public use and that The Cleveland Union Stock Yards Company may not dictate and enforce upon the New York Central an unlawful discrimination in the use of the track or prevent the use of the track by the New York Central in performance of the service customary and required by law.

There is nothing in the record indicating such a dedication on the part of the stockyards company. By continuing to furnish transportation service and by the use of this track the railroad company conceivably may have assumed our having imposed upon it an obligation to furnish transportation service to complainant's plant but the railroad company in the past acquired the use of necessary facilities by contract since November 12, 1938.

It might have used the same facilities under the terms of
806 the offer of the owner; and, of course, the railroad has the right of eminent domain, by which it may acquire property necessary for transportation service.

Within the limits imposed by law the owner of the property may dictate the terms of its use but in this case there has been no attempt to enforce upon the New York Central any discriminatory practice or to make it impossible for them to furnish service as complained of.

The record shows, on pages 18 and 57, that the failure to use the track for livestock is due to the fact that the New York Central could not see its way clear to pay for the privilege what the stockyards company is seeking to collect from the railroads, as fixed in the letter from The Cleveland Union Stock Yards Company to the New York Central Railroad.

Commr. MILLER. Why do you call the livestock competitive traffic? You mean competitive with those other packing houses?

Mr. HEINEMANN. No, sir; it is competitive so far as the stockyards company is concerned because it is chartered primarily to operate a market for livestock and livestock which moves on other than its facilities is, of course, treated as competitive livestock.

It must be clear to everyone that the stockyards company did not dedicate a portion of its property to public use when such use could and probably would result in a diversion of a substantial part of the company's business.

807 No one has asserted, prior to this novel claim of the complainant, that this property is public property and available to the public use without compensation to its owner. It is still on the tax duplicates and the stockyards company is still required to pay all taxes and assessments made against said property.

Complainant seeks to appropriate a part of the stockyards property and to have this Commission issue an order to that effect against the stockyards company.

While the complainant alleged that the stockyards company is a common carrier by railroad, the complainant has apparently abandoned that contention and now seeks to cast the stockyards company in the role of a person interested in or affected by the rate regulation or practice under consideration.

Counsel argues that if the Commission is convinced that the stockyards company is imposing a rule that violates a provision of the Interstate Commerce Act the Commission may make an order against the stockyards company as well as against the railroad.

The stockyards company is not interested in or affected by the practice complained of; that is a matter between the complainant and the line-haul carriers.

In the second place, it has not imposed any rule which violates the act; it has not forced the carriers to discontinue services.

808 It has merely sought compensation for the use of its property and it has not denied its use.

The track in question has been described as being in the middle, between two sections of track owned by the New York Central.

The complainant and the line-haul railroads seek to put the owner of that track in the middle; all of them want to use the property and none of them wants to pay for its use.

The stockyards company has been and is agreeable to the use of this property if compensated for the use and for the loss of business occasioned by its use.

Mr. Rynder said that all of his stock must be delivered through the stockyards. As a matter of fact, this record will indicate that

the New York Central has facilities some three miles away from the stockyards——

Commr. AITCHISON. I thought that it was five.

Mr. HEINEMANN. I beg pardon.

Commr. AITCHISON. I thought that it was five.

Mr. HEINEMANN. They may have moved it closer. In any event, they have the facilities of their own and they also have team tracks and deliveries are made from team tracks in Chicago.

The question also arose as to the Swift & Company pens and I think it only fair to state, like the airplane traffic, there was no occasion for insurance against airplane accidents before
809 we had them; there was no necessity of imposing a prohibition against direct shipments of livestock out there when they did not move.

After they started moving, then the occasion for this restriction was there; and then is when this dispute arose. Swift & Company did not have, of course, facilities on direct call, for they didn't need them.

I am not making that as a criticism against Swift & Company but I just simply state the fact.

The question was raised about the use of this track by the stockyards company. It was built primarily, in the first place, incidentally, to serve unloading chutes, which are still there and in use by the stockyards company for the loading-out of small stock, primarily hogs, moving from the stockyards. It is entirely contrary to the thought of the stockyards company and it would be against its interest to abandon the use of the track, serving packing houses such as the complainant operates. Not only is there no thought in their mind of doing this; it is to their interest to encourage the movement of traffic to and from the plant because it is one of its big patrons.

The complainant is saying to this Commission that it shall permit the continued free use of a track of this kind and the stockyards company is receiving no compensation whatever from the railroad or from the railroads whose facilities are reached over the tracks which it owns.

810 Commr. AITCHISON. What compensation do you get when coal is delivered?

Mr. HEINEMANN. Coal?

Commr. AITCHISON. Yes.

Mr. HEINEMANN. None whatever, sir. That is and has been one of the points in dispute. The stockyards company, of course, under their arrangements with the railroad company—The railroad company undertook, as one of its considerations, the maintenance of the track; but I mean so far as compensation for the

investment in the track and in the fee which the company owns under the tracks, it receives nothing.

Commr. ATTCHISON. Well, they do, however, maintain the tracks.

Mr. HEINEMANN. The railroad company maintains the tracks under the terms of that lease; that is one of the considerations, sir.

Commr. ATTCHISON. Well, it is a consideration and a valuable consideration, although, from your standpoint, it might not be considered to be adequate.

Mr. HEINEMANN. Well, of course, the mere maintenance of the track would not yield a thing on the investment.

Commr. ATTCHISON. Well, it keeps it up.

Mr. HEINEMANN. Thank you, gentlemen.

Chmn. ALLDREDGE. Mr. Pierce.

811 *Oral argument of Mr. R. R. Pierce on behalf of the New York Central Railroad Company and other Cleveland carriers*

Mr. PIERCE. If the Commission please, I want to apologize for my oversight in not asking for time. I will try to get through in this 15 minutes.

I do think that it is necessary for the Commission to have a little more correct understanding of the arrangement here.

Chmn. ALLDREDGE. Would you permit me to ask a question before you start?

Mr. PIERCE. Certainly, Mr. Commissioner.

Chmn. ALLDREDGE. Does the record show what kind of a contract you have entered into with Swift & Company concerning the operation of its private siding serving the plant?

Mr. PIERCE. I do not believe that is in the record.

Chmn. ALLDREDGE. Well, you have entered into an unrestricted contract with Swift & Company to furnish service over that private siding to the plant without protecting yourself against any contingency. Doesn't it more or less do that, even going beyond that?

Mr. PIERCE. Well, that would put the onus on the railroad company, I presume, if that were done. But that, as I understand it, is not in the record here at all, as to what the early stages—what did transpire in those early stages here.

812 There was a contract in 1899 between The Cleveland Union Stock Yards Company and the railroad company covering the stockyards track generally. There are a number of tracks over there.

In 1924 that agreement was amended so as to provide that the railroad company would maintain these tracks even though they were owned by the stockyards company, and in return for that the railroad company could have the use of the tracks and of other tracks there which also serve the stockyards enterprise and industries, but that contract was always limited with this 30-day terminating clause; there was always the 30-day terminating clause in the contract between the stockyards and the railroad company for the use of this track 245, as well as the use of all those stockyards tracks.

Chmn. ALLDREDGE. Well, even if that be granted, apparently you have entered into a contract with Swift for the operation of the private sidetrack within its plant.

Now if Swift & Company calls upon you to deliver these cars on that siding down there what excuse have you if you have got into a contractual situation somewhere between that plant and your main line which prevents you from doing it?

Mr. PIERCE. Well, that is not in the record, your Honor.

Chmn. ALLDREDGE. That makes it expensive for you to do it.

Mr. PIERCE. That is not in the record, your Honor. The
813 early stages of the negotiations—There is nothing to show that Swift & Company was not on notice at all times about the fact that this 1,619 feet of track belonged to the Cleveland Union Stock Yards Company.

Commr. PORTER. But is that any defense to you? Suppose they were on notice that there is a private siding up to your lines that does not belong to the New York Central; now, then, between that and the other track there is some private right, we will say. Does that excuse you? Really you are bound under the statute to serve over there.

Mr. PIERCE. Mr. Commissioner, I would like to answer that, if I may, by stating something else first.

Commr. PORTER. Why, sure.

Mr. PIERCE. This is just a sidetrack here that belongs to the New York Central Railroad Company, connecting with this stockyards track, and there are industries over there: there is one coal company over there and there are about five or six industries that are served. This is New York Central track here [indicating].

Chmn. ALLDREDGE. It is part of your terminal facilities, part of your railroad.

Mr. PIERCE. Well, I would say this disconnected track there, that is, with the stockyards track——

Chmn. ALLDREDGE. And you have entered into a contractual arrangement with them. In other words, they are on that
814 track and they are served by it and you have permitted a

condition to exist between that part of your track and your main line which may at any minute interfere with your ability to live up to these other contracts.

Mr. PIERCE. I do not think so, Mr. Commissioner, and for this reason: This record is not complete with reference to the conditions that prevailed with reference to the other sidetracks that are served by the use of this 1,010 feet nor is the earlier stockyards agreement in here. Is that correct, Mr. Rynder?

Mr. RYNDER. That is what I rose for a moment ago, and I would just like to say this by way of explanation: I asked to have an exhaustive search made to see what the early arrangements were and we solicited the aid of the New York Central in that search, and the stockyards company, and I believe it was generous—I mean I believe that they searched all through their files; and the final report to me was that they could not find this first agreement, and that is why it is not in the record.

Commr. MAHAFFIE. Is there presently an agreement with Swift & Company as to the use of that line?

Mr. RYNDER. Not a written contract.

Commr. ATTCHISON. Why don't you have one? Why didn't you have one executed some time ago? You have section 1 (9) of the act.

Mr. RYNDER. I don't think we need it.

Commr. MAHAFFIE. Sometimes there is one.

Commr. ATTCHISON. That relates to the matter of switches and the like.

Mr. RYNDER. But there has been, as I see it, an implied contract to perform the customary service there that has worked itself out over the years.

Mr. PIERCE. If I may continue, the record here shows no contract between Swift & Company and the New York Central Railroad.

Chmn. ALLDREDGE. Well, if you are rendering service there along that private track cannot we assume that a contract exists there, in writing or oral? It is implied; isn't it?

Mr. PIERCE. I think the burden would be, Mr. Commissioner, upon the complainant here to show that there was a condition of that kind existing and which entitled it to expect continued service.

Chmn. ALLDREDGE. If you are rendering service there isn't a contract necessarily implied?

Mr. PIERCE. Oh, there is an implied contract but the terms of that implied contract are not in this case and not before the Commission.

Commr. ATTCHISON. Well, the law supplies it; doesn't it?

Mr. PIERCE. Sir?

Commr. ATTCHISON. The law supplies it; doesn't it?

Mr. PIERCE. I doubt it here, Mr. Commissioner.

Commr. ATTCHISON. All right.

Mr. PIERCE. The thing that I would like to say here is that at all times the railroad company has been restricted in the use of this track 245 by this agreement with the stockyards company, which had this 30-day termination clause in it. The stockyards company owned the track; it was their property.

Commr. JOHNSON. May I ask this: Does that termination clause give them the right to terminate operation with respect to every kind of traffic?

Mr. PIERCE. It just says "terminate"; it is not any more explicit than that.

Commr. PORTER. But if you have legal obligations over there on the other part does the fact of your contract there excuse the New York Central in any way? Is not the burden on you to render that service over there that you are under a legal obligation to render?

Mr. PIERCE. Mr. Commissioner, there is no restriction of service or deliveries over the Swift & Company now except of livestock and that restriction was dictated by the stockyards company.

This thing is all covered in docket 28421, and we have to go outside the record here in order to cover it.

Now, the thing that brought this about was the letter
817 from the stockyards company which Mr. Heinemann read here, which notified the railroad companies—the stockyards company notified the railroad companies that "if you want to move traffic over this track you are going to have to pay the same per-head rate for moving livestock over there as you would have to pay to unload it at the unloading pens."

Swift & Company at that time were getting a volume of livestock directly to their plant through this track.

The record does show that the Swift & Company facilities for unloading livestock at their plant, while they had eight pens located over there inside the plant, only one car could be spotted at a time; the pens were some 300 feet away from the unloading track and they could only, as I say, spot one car at a time; and Swift & Company did not want to pay this charge for using this track and the railroad company did not want to pay the charge for using the track.

So, the railroad companies notified the packers, Swift & Company and the other users of the tracks back in there which had to be reached by this track No. 245, that if they wanted to use that track they would have to get permission from the stockyards company to do it because the track was owned by the stockyards company.

Commr. MILLER. I would like to know what the New York

Central is going to do if that contract is canceled and they cannot give their service to those industries.

818 Mr. PIERCE. I am not smart enough to answer that question, Mr. Commissioner.

Commr. MILLER. Well, it seems quite concrete to me, from outside the record.

Commr. PORTER. Well, if you have legal obligations over there it might even force you to condemnation proceedings so as to be able to render that service; might it not?

Mr. PIERCE. I am also not smart enough to answer that, Mr. Commissioner; that is hardly up in the present case.

Commr. PORTER. Yes.

Chmn. ALLDREDGE. It would seem that you have allowed an industrial development to take place, probably, over there, by leaning upon this uncertain provision about that 1,619 feet of track; isn't that right?

Mr. PIERCE. I think probably the whole thing came about because of the investment of the packers who wanted to arrange for traffic down in there for their own convenience. As I say, this record is not complete, as I see it, for a full consideration of the picture here; and if the Commission feels that all of those angles are important——

Chmn. ALLDREDGE. Well, they represent a condition that could grow and grow and grow and grow year after year.

Mr. PIERCE. It could grow; yes, sir.

Chmn. ALLDREDGE. It has grown since this case started; hasn't it?

819 Mr. PIERCE. I am not informed about that. There is no history in this case back of 1924 in the record.

Commr. SPLAWN. What does the record show, Mr. Pierce, as to the holding-out of the New York Central to the public as to this track?

Was it distinguished in any way or had it distinguished in any way between this and its main line? Has it been treated by the New York Central generally as a part of its own tracks and facilities?

Mr. PIERCE. It has not, Mr. Commissioner; it has been treated as a track and property owned by The Cleveland Union Stock Yards Company and there has been no direct control and management.

The New York Central Railroad Company simply had a permissive use to move cars over that track and they do today move cars over that track of other commodities than livestock.

Commr. PATTERSON. Is there a condition upon which you serve the other industries?

Mr. PIERCE. That is right; the same conditions as to all of the other industries as are applied to Swift & Company.

Chmn. ALLDREDGE. Do you suppose those other industries know that?

Mr. PIERCE. Well, I would think they do.

Commr. ATTCHISON. Have you got it in your tariff?

Mr. PIERCE. In the tariff?

820 Commr. ATTCHISON. Yes.

Mr. RYDER. No, sir.

Mr. PIERCE. I think the tariff is covered. I have not got them. They are probably, it seems to me, not of importance.

Commr. ATTCHISON. Well, it is of prime importance with respect to the question of holding out.

Mr. PIERCE. I think there is a notation in the tariff there which says it does not apply to livestock.

Commr. ATTCHISON. Well, formerly you had no such restriction or distinction, did you, in your tariff?

Mr. PIERCE. Well, now I would not be able to answer that, Mr. Commissioner.

Commr. SPLAWN. Is this contract one that you are required to report to the Commission and file with the Commission? The contract with the stockyards company for the use of this track.

Mr. PIERCE. I do not know whether that is required to be filed or not.

It simply said that the stockyards wanted to have the use made of the track and the railroad companies could maintain them if they wanted to have the use of them.

Of course, this whole thing around the stockyards—industry has grown up and all these relations between the railroads and the stockyards have been gone into in docket 28421.

Commr. ATTCHISON. The question would depend on
821 whether the Cleveland Union Stock Yards Company is a common carrier; wouldn't it?

Mr. PIERCE. I think it would; and they were held to be a common carrier during a part of this time.

Commr. ATTCHISON. Well, if they are a common carrier, by your provision here, a part of the time, the part when they are transporting livestock, then you have the obligation.

Mr. PIERCE. That, Mr. Commissioner, is something that has not been determined definitely, about the Cleveland Union Stock Yards Company being a common carrier; the whole thing has been sort of up in the air in connection with The Cleveland Union Stock Yards Company.

Commr. ATTCHISON. We held that they were not?

Mr. PIERCE. You held that they were while they were unloading livestock, while they were performing a transportation service, but not because of this track.

Commr. SPLAWN. That is what they said; is it not?

Mr. PIERCE. They held that the stockyards, since it did not any longer unload livestock, was not a common carrier, but that if it reverted to unloading livestock it would, for that reason, be reopened again in a specific case. I have gotten quite a ways off my argument here in answering these questions; may I take more time or not?

Chmn. ALLDREDGE. Well, go ahead.

Mr. PIERCE. All right. Thank you, sir.

822 There is no complaint, even though the railroads notified Swift & Company in 1938 that The Cleveland Union Stock Yards Company would not permit the use of the track any longer—the railroad companies notified them in 1938 but Swift & Company said nothing until 1941.

They wrote a letter in 1941, asking or demanding that that service, as Mr. Rynder says, be restored.

The railroad companies replied that that track belonged to The Cleveland Union Stock Yards Company and that it was like any other private sidetrack, so that if Swift & Company would obtain the necessary permission to use the stockyards tracks the railroad companies would resume the delivery of livestock. It only applied to livestock, and that was competitive business with the stockyards company's. Now those letters are in the files, exhibits 4 and 5.

I think rather than spend any more time on the contract provisions, although we think that is the most important thing in this picture, the restriction of this contract between The Cleveland Union Stock Yards Company and the railroad companies, which gave them only a 30-day terminating clause, they could not make any other use of it except as it was limited by that contract.

Chmn. ALLDREDGE. Well, from my point of view, you certainly ought to have put these other industries located farther out on notice when you entered into that sidetrack arrangement

823 with them of what flimsy grounds their service would depend upon.

Mr. PIERCE. Well, Mr. Commissioner, if I may go out of the record I would say that there would be a number of those documents or items that might be proper in this case but the burden is upon the complainant here to show that there was any dedication here to public use of this property.

Chmn. ALLDREDGE. Well, I do not know about that. He has a right to expect service on a private siding that connects with your line to get into his plant.

Commr. JOHNSON. There is no question, is there, but what that part that goes up towards the right side on the map is dedicated

to public use and is railroad property of the New York Central?

Mr. PIERCE. That is the track that serves the former haybarn of the stockyards.

Commr. JOHNSON. It is owned by the New York Central; isn't it?

Mr. PIERCE. That is New York Central track. Then there is another track in here, off 245, which is used also; that is the stockyards'.

Commr. JOHNSON. I am talking about the New York Central. This section is called the New York Central tracks and is dedicated to public use, as I understand it.

Mr. PIERCE. That would be a conclusion. I believe that it connects with the New York Central but as to whether or not
824 it is dedicated to public use, it seems to me, when you get into the realm of public-use dedication there is some question about it.

Commr. JOHNSON. Well, then, it is subject to the act.

Mr. PIERCE. I do not feel smart enough to answer that properly, Mr. Commissioner.

Commr. MAHAFFIE. Is that switch in the ownership of the stockyards or the New York Central?

Mr. PIERCE. I believe it is—I think the New York Central owns this track so that they can get back here; I think they probably do, Mr. Commissioner, although practically all of that track has been taken up and has been removed; there is no longer any way or any use for that track over there. Now I would like to say this:

We feel that the proposed report indicates that the contentions of the parties received the careful consideration of the examiner.

The examiner gave full credit to the fact that the ownership of the 1,619 feet of track 245 was the controlling feature in this case and that the stockyards company continually owned said track and yet so owns said track.

The examiner correctly applied appropriate principles to the facts developed in the record, and it is our opinion, of course, that the proposed report as written should be sustained by the Commission.

825 The right to the use of the stockyards company's portion of track No. 245 has always been a limited right by reason of the presence of the 30-day termination clause in the contract and further by the amendment to the contract governing the movement of livestock over the said sidetrack.

The record shows that the New York Central Railroad has delivered shipments alike to all industries, including complainant and competing packing companies which are served by the use of

track No. 245, to the extent that the stockyards company has permitted the use of such track.

There is no discrimination here, as the carriers see it, between Swift & Company and these three industries over here. They have their own private sidetracks which connect directly with the New York Central, leading out from its main line. There certainly can be no——

Chmn. ALLDREDGE. Well, Swift & Company, as I understand, has a private siding into its plant, connecting with the New York Central Railroad Company's tracks.

Mr. PIERCE. Not a complete connection; it does not connect with the main track; it connects with two intervening tracks. There are four sections here.

Chmn. ALLDREDGE. What difference does it make to the shipper or receiver whether he connects to a main track or some substantial track?

Commr. JOHNSON. As I understand it, you have not been
826 forbidden to transport—Under the contract you cannot transport livestock over track 245 but it is just simply a question of how much you are going to pay if you do it.

Mr. PIERCE. It was a question, Mr. Commissioner, of saying to these people that were served by this track that we would do such things as the stockyards company permitted us to do over that track.

Commr. JOHNSON. They will permit you to do it, provided that you pay them for it the normal tariff rate.

Mr. PIERCE. If the railroad would pay $10 a deck in some cases instead of $1.25, which the Commission has found is reasonable for the service—If it would pay that per-head, which amounts to eight times the reasonable charge for unloading at the stockyards, it would probably be true.

Chmn. ALLDREDGE. Under your theory should not this contract that Swift & Company has, whether it is in writing or implied, concerning the private sidetrack serving this plant, have been made directly with the stockyards as the owner of that track instead of with the New York Central Railroad? Under your theory?

Mr. PIERCE. Swift & Company should procure the use of that track for servicing this plant.

May I say this: There is nothing obligatory in the act, so far as I know, that the railroad company has to go off its own property and acquire property of someone else in order to
827 connect with private sidetracks.

Commr. JOHNSON. But you are doing it all the time, and this connection is not, as I understand, with the property of somebody else but is with the property of the New York Central.

Mr. PIERCE. Subject to such rights as the New York Central acquires under this agreement with the stockyards company.

Commr. JOHNSON. Its agreement is that it can use it provided it pays for it, according to Mr. Heinemann.

Mr. PIERCE. I don't think Mr. Heinemann's letter is in evidence. It may be.

Mr. HEINEMANN. It is.

Mr. PIERCE. What exhibit is it, Mr. Heinemann?

Mr. HEINEMANN. It is in evidence.

Mr. PIERCE. If it is I stand corrected. We feel that the principle controlling this current situation was decided by the Commission in 68 I. C. C. 261, Certain-Teed Products Company v. C., R. I. & P. Railroad Company, et al.

In that case the Commission said: "There is no duty on the part of a common carrier subject to the act to provide tracks off its lands to effect connection with an industry. If an industry desires connection with a trunk line the duty devolves upon it to make arrangements for the procuring of a spur. Paragraph 9 of section 1 makes it the duty of a common carrier under
828 stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce but this duty does not arise until the shipper has provided the sidetrack."

Commr. MILLER. Well, do these industries on your railroad meet that condition?

Mr. PIERCE. Outside of the record, I think they do; yes, sir.

Commr. MILLER. They do.

Mr. PIERCE. That is not in this record.

Commr. MILLER. I think we are making a record here, apparently.

Mr. PIERCE. Well, if we were going to make it over again I think we would include, perhaps, other matters.

Chmn. ALLDREDGE. That situation is rather precarious under those conditions; is it not?

Mr. PIERCE. The switching rights over that line?

Chmn. ALLDREDGE. All those industries on that branch of your line.

Mr. PIERCE. They know that this track belongs to the stockyards.

Commr. JOHNSON. Suppose the stockyards gave you another 30 days' notice and said you could not use the track at all, what would those industries do?

829 Mr. PIERCE. I suppose they would be down here before the Commission for an order compelling the stockyards to supply the track down there.

Commr. AITCHISON. They have no relations, under the law, with the stockyards, unless the carrier is subject to the act.

Commr. JOHNSON. Well, the New York Central; they do not connect with the stockyards.

Mr. PIERCE. Well, it is not a complete connection, Mr. Commissioner; it is incomplete.

Commr. JOHNSON. It is, so far as they are concerned.

Mr. PIERCE. Sir?

Commr. JOHNSON. It is, so far as they are concerned; they don't know what is done.

Mr. PIERCE. Yes; but on this line here—This is the missing link of a complete connection between the New York Central and Swift & Company.

Commr. JOHNSON. It is a link that may be somewhat missing.

Mr. PIERCE. Well, it is missing right now for livestock.

Commr. JOHNSON. Missing for livestock under certain conditions.

Mr. PIERCE. And that is because it is restricted by The Cleveland Union Stock Yards Company provision.

Chmn. ALLDREDGE. Well, now, the stockyards company may make the same sort of restriction on the transportation of coal if it wants to?

830 Mr. PIERCE. They could; yes, sir. And, as Mr. Heinemann stated to the Commission here, it is not their desire to do that; they simply want to control this livestock and bring it through the stockyards upon the yardage charges. There is your real picture, if I do have to come out and say it.

Chmn. ALLDREDGE. You have got to render service to these other industries down there on whatever condition the stockyards wants to enforce; is that right?

Mr. PIERCE. We built that because they own the track and reserved their utilization or restriction by direct management of the track.

Chmn. ALLDREDGE. And, knowing all that, the New York Central built on through that other part of the line.

Mr. PIERCE. With the knowledge of the users of the track there; yes, sir.

Commr. AITCHISON. How could they have knowledge of what your contract with The Cleveland Union Stock Yards Company provided, when we can't even agree on what it is right here?

Mr. PIERCE. Well, they had knowledge, I would say, Mr. Commissioner, that there was a permissive, a restricted, limited use of that track. Yes; that is that one limit at that time, if I might take a chance on saying that that is a limitation.

Commr. AITCHISON. A good chance for a guess.

Mr. PIERCE. Now another thing: We feel that the Commission in a very early case, in a decision written by Chairman
831 Cooley, enunciated the principle of law involved in this controversy, in 2 I. C. C., 771, and in that case the Commission said:

"1. In the absence of statutory provision the rights of a railroad company under a lawful agreement for the specified use of the tracks of another railroad company are measured in respect to the tracks used by the terms of the contract and the provisions of the act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.

"2. The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the provisions of its agreement and does not violate the provisions of the act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned."

The arrangement with the stockyards company ought to be in the same category here.

Chmn. ALLDREDGE. Do you think so?

Mr. PIERCE. Personally, it is my opinion, it could.

832 Commr. JOHNSON. Well, have you ever made a contract with the owner of this 245 that you would not transport livestock over that?

Mr. PIERCE. We have been subject, Mr. Commissioner, to their control by this 30-day terminating clause. They came in and said, in 1934, "We are going to terminate this contract; we are going to cancel it." That was in 1934.

Well, they had conferences and it was agreed that it would not be canceled; but The Cleveland Union Stock Yards Company wanted to amend it and that amendment was that they could haul anything over that track except livestock—"We want the livestock to come through our stockyards."

Commr. JOHNSON. That you could haul at a price.

Mr. PIERCE. We could haul at a price; yes, sir.

Commr. JOHNSON. Well, then you have never made a contract with them that you would not haul livestock over 245.

Mr. PIERCE. Well, they have told us that we could not haul livestock.

Commr. JOHNSON. Except at a price, you say.

Mr. PIERCE. Yes, sir.

Commr. JOHNSON. Well, at a price. But you can haul livestock over the track and you have no contract to the contrary outstanding.

Mr. PIERCE. There is no contract to the contrary outstanding.

833 — In the Alford case, if I may come back to it just a moment, the Commission said there:

"The law deals with the actual situation and does not create a different one. Its provisions apply to powers that exist and regulate their exercise. The Union Pacific Company operates its own road. The respondent has only a running privilege over a portion of it, to reach points on its own line by a shorter route, operating its own trains, but the tracks, stations, switches, train dispatchers, and line employees remain in charge of the Union Pacific Company, which company also makes the rules and regulations for the operation of the road. The respondent has no control over the road or its instrumentalities. It has no contract right to use the stations of the Union Pacific Company or its facilities for business on its route, except switches, water tanks, and telegraph lines. It receives and discharges passengers and freight on its own tracks and at its own stations both at Kansas City and Topeka. Its rights, therefore, are not the general rights of a common carrier upon its own road but are limited and qualified by the agreement."

Chmn. ALLDREDGE. Well, now, carrying the analogy a little further, suppose in the case the railroad operated under the trackage rights and had gone ahead and made a sidetrack contract with some industry to serve it without putting those restrictions in.

834 Now what do you think would be its obligations if the owner of that sidetrack demanded service?

Mr. PIERCE. Might I ask a question? That is assuming that they were not put on notice that there was a restricted use of the track?

Chmn. ALLDREDGE. That is right.

Mr. PIERCE. Then I would say that the railroad company was undertaking something that it would probably be compelled to continue.

I say "probably."

Chmn. ALLDREDGE. But you have not told us why Swift & Company and these other industries on that detached branch, after having been put on notice that their sidetrack contracts are tied up with this contract you have with The Cleveland Union Stock Yards Company——

Mr. PIERCE. We haven't told you that; it isn't in the record nor is there anything else in the record to show that we established a service that was to be continued with Swift & Company.

It was always a restricted service and there is no showing in this record that there is anything other than a restricted service here.

Mr. RYNDER. Oh, I beg pardon.

Mr. PIERCE. Now the other situation, if I may take just a moment:

835 Swift & Company billed shipments of livestock for delivery at the unloading chutes of the stockyards as well as for delivery to its private sidetrack during the time that the New York Central Railroad had the permission of the stockyards company to use track No. 245 in order to make deliveries of livestock to Swift & Company's plant.

Chmn. ALLDREDGE. So far as I am concerned, I do not see what difference that makes.

Mr. PIERCE. Well, except that when they did have the use of the track for livestock they did not use it 100 percent; they still had the service over the stockyards if they chose.

Chmn. ALLDREDGE. The stockyards is there for whatever use they want to make of it.

Commr. JOHNSON. Do I understand you to say that the record discloses that Swift & Company and other industries were on notice that they were connected up with your main line or with your main siding by a terminable contract?

Mr. PIERCE. I do not believe that the record shows, Mr. Commissioner, that the other industries were.

Commr. JOHNSON. I thought you said a minute ago that the other industries were.

Mr. PIERCE. I say that the record does show that Swift & Company have had no assurance that they could have continuous service over this track. I think the record is silent on that phase of it.

836 If I am wrong I would be glad to be corrected on it.

All of the cases cited by Swift & Company in their brief and on argument are clearly distinguishable from the situation here.

In those cases where there may be some similarity of conditions the tracks were owned by the railroad company and they had full management and control of the tracks; it was not where there was an intervening party like The Cleveland Union Stock Yards Company in any of the cases cited.

Mr. RYNDER. There is a case to the contrary. That is such a misstatement!

Mr. PIERCE. In the Morgan Run Company case, the Burt heirs

conveyed a 33-foot strip of land to the Morgan Run Coal & Mining Company, grantee, to construct, maintain, and operate a railroad or tracks, sidetracks, switches, and so forth, on the premises, and secured to the grantors, their heirs, and so forth, the same and equal opportunity and facilities for receiving and shipping freight of all kinds as are received by other persons, and would have permitted the grantors to have built a railroad or switch from the premises so conveyed to premises owned by grantors.

That was the situation in the Morgan Run Coal Company case.

In Union Lime Company v. Chicago & North Western, that was a condemnation and eminent-domain proceeding to
837 obtain land to extend a private track.

The Wisconsin statutes were involved in the building of a spur three miles long. The Wisconsin railroad commission directed the railway company to extend the spur as the use of the spur track, when built, would be a public one.

The Supreme Court said, "While common carriers may not be compelled to make unreasonable outlays it is competent for the State, acting within the sphere of its jurisdiction, to provide for an extension of their transportation facilities under reasonable conditions."

A special Wisconsin statute controlled in that case.

Now on the question of dedication—And I wish that I had more time to discuss this subject—we believe that the burden of proof here that there has been a dedication is upon the complainant.

Commr. JOHNSON. I do not see how dedication gets in here as an issue, myself, but others may. But how do you think that it gets into the case?

Mr. PIERCE. Only to answer the arguments of the complainant; that is the only reason. I do not see how it gets in here.

Commr. AITCHISON. You are using it and used it in railroad service until this 30-day option was exercised and you were ousted.

Aren't you estopped to claim anything with respect to its
838 not having been put into public service?

Mr. PIERCE. It is our claim, Mr. Commissioner, that there was no dedication because the owner at all times maintained its absolute control, when there could be no dedication of the property.

I think the real dedication of property turns upon whether the owner retains control; if he retains control of it there is not open adverse user.

Commr. AITCHISON. It makes no difference in the least that there is a defeasance clause.

Mr. PIERCE. I would like to correct Mr. Rynder on the fact that there is a lease. This is not a lease as a lease is ordinarily

understood; it is simply a permissive contract to use that track in such way as The Cleveland Union Stock Yards Company would permit it to be used.

Commr. AITCHISON. Well, your tenancy by sufferance, then.

Mr. PIERCE. I would say that that is so, except that "by sufferance" is not intended to cover all the burdens of the use of the track.

Commr. AITCHISON. But you do compensate him in the way of maintenance of the track.

Mr. PIERCE. For this 1,619 feet; that is correct; yes, sir.

Commr. AITCHISON. Is there any other consideration that you make to The Cleveland Union Stock Yards Company?

839 Mr. PIERCE. No, sir. In connection with other tracks not involved here we also agreed to maintain those tracks if they could be used.

Commr. AITCHISON. That is, you maintain not only track 245 but you maintain also other tracks.

Mr. PIERCE. Tracks of the stockyards company used and placed on their property; the railroad maintains them and the railroad company can make such use of the tracks as The Cleveland Union Stock Yards Company permitted.

Commr. SPLAWN. As I understand, they recently exercised their option on either this 1,619 feet, and unloaded at their private pens, or at the stockyards; is that correct?

Mr. PIERCE. Up until 1938.

Commr. SPLAWN. 1938. And did you file a tariff in which it was stated that there would be no delivery to Swift & Company?

Mr. PIERCE. Yes, sir; the tariff says—I think it is 8785—the tariff says it does not apply to livestock. And that is an exhibit in this case; I believe it is exhibit 2.

Commr. SPLAWN. That is for deliveries on that 1,619 feet.

Mr. PIERCE. Yes, sir; which is delivered by us on that 1,619 feet.

Commr. SPLAWN. I see.

Chmn. ALLDREDGE. Your time is up, Mr. Pierce.

Mr. PIERCE. Well, thank you very much.

840 Chmn. ALLDREDGE. Mr. Rynder.

Reply Argument of Mr. R. D. Rynder on behalf of Complainant

Mr. RYNDER. I will use just a few minutes. There have been some questions from the bench as to whether there was a contract there and whether there was any public holding-out by the New York Central in connection with this service.

In a great many of these transportation questions private

parties do a couple of little things and the law makes the rest of the contract, and I think that such a contract was made here. The New York Central tariff, described in their opening brief at page 8—And I believe it is copied in the record—for many, many years provided—I think in most of them and I think in most of your rules—the specific industrial deliveries which would be made.

I am not attempting to quote the words of the tariff but it did in specific words say that the line-haul rate would include the delivery to the company along this portion of the Swift & Company tracks of livestock and all other commodities.

We say that that was a holding-out and we were entitled and we therefore became a party to a contract held out by the carrier under which we have a right to have that delivery at our plant just as a contract with the railroad entitles us to have a car of salt or coal delivered at our plant.

841 Now there is nothing in that tariff—And I defy the ingenuity of counsel to find it—which places any limitation or even mentions that any part of the track used in making the delivery was owned by a party other than the New York Central.

I submit most emphatically that counsel cannot find a word to that effect; and the only place that it had the right to do that, even—And if counsel can find that within six months from now I will agree that he may put it in the record.

Commr. ATCHISON. Don't you want us to decide this case before then?

Mr. RYNDER. If he can find that I will be glad to ask to have it reopened on that ground, because it is not there. And both counsel, who are my very good friends, know very well that no such language is in the tariff.

Now as to the question of compensation for that track I do not think that concerns Swift & Company at this stage of the proceeding. The railroad simply changed its industrial terminal operations and eliminated the delivery of livestock to Swift & Company and we have asked to have it restored.

Now, if that involves some settlement for the use of that track between the parties, we think that that is a supplemental chapter of the story which should come here upon a proper statement of the facts when the time arises.

Commr. SPLAWN. If the Cleveland Stock Yards—Mr. Rynder, I don't know where you are the one to answer; you may

842 answer if you want to——

Mr. RYNDER. Sir?

Commr. SPLAWN. If The Cleveland Stock Yards insists on this modification of their contract with the New York Central then

we will, in order to straighten that out, have to reopen the stockyards—common carrier case and determine whether or not under that state of the facts as to the use of the track they are common carriers.

Mr. RYNDER. That is pretty difficult for me to answer and I would like to say that part of the difficulty of that answer is going outside of this record.

What I mean is that the Livestock Terminal Service Company—I think you are all acquainted with that company—has on file here an application to abandon its service and that has been heard by the examiner.

Now, if your determination would be that the service would now be performed by the stockyards company, probably then its status would revert to what it was formerly, but that depends upon your decision in the abandonment case and whether that work goes back to and is performed by the stockyards company; and I cannot answer that question at this time. I thank the Commission.

Chmn. ALLDREDGE. The case stands submitted and will be taken under advisement, and the Commission adjourns.

(At 11:45 a. m. the hearing herein was concluded.)

845 Before the Interstate Commerce Commission

Docket No. 28714

SWIFT AND COMPANY

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

Reporter's transcript of oral argument

HEARING ROOM "A",
INTERSTATE COMMERCE COMMISSION BUILDING,
Washington, D. C., Wednesday, October 3, 1945.

The above-entitled matter came on for oral argument before the Commission at 10:00 o'clock a. m.

Present: Commissioners Rogers (Chairman), Porter, Lee, Mahaffie, Miller, Splawn, Alldredge, Patterson, and Barnard.

Appearances: R. D. Rynder, 4115 Packers Ave., Chicago, Ill., appearing for complainant. Matthew S. Farmer, 802 Engineers Bldg., Cleveland 14, Ohio, appearing for The Cleveland Union Stock Yards Co. Robert R. Pierce, 1324 West 3rd St., Cleveland, Ohio, appearing for New York Central Railroad and other Cleveland carriers.

847 PROCEEDINGS

Chairman ROGERS. The Commission will hear argument in Docket 28714, Swift and Company against The Baltimore and Ohio Railroad, et al. Mr. Rynder.

Argument of R. D. Rynder

Mr. RYNDER. If the Commission please: This case involves the switching of livestock to the plant of Swift and Company, Cleveland, Ohio. I will come to the facts in that connection in just a moment.

I would at first, however, like to disclaim one compliment or epithet, as you call it, that appears in the defendants' exceptions, and that is the reference to the complainant several times as appearing here as an innocent shipper. The complainant and myself are not innocent in any sense. I think we all know the facts in this case from the time they got it started. But there were certain facts which perhaps need a bit of explanation.

The plant of complainant is opposite the stockyards, and I will describe it more particularly in a moment.

For a number of years the stockyards had provided in its tariff that the charge made by it in connection with the unloading, and so forth, of livestock included delivery. When the alter ego of the stockyards, the Livestock Terminal Company, took over
848 the unloading, it also provided that its charges include delivery of livestock. As long as that was so, the livestock arrived at complainant's plant at the flat Cleveland rate whether it was unloaded in the stockyards or whether it was switched to our plant.

It was not until the decision of the Commission in Baltimore and Ohio vs. Cleveland Union Stock Yards Company, 255 I. C. C. 579, which was in May 1943, that it was decided as to Cleveland that the shipper was not entitled to egress for its livestock from the stockyards except upon payment of the yardage charges. So that it was only at that time that the refusal of the New York Central to deliver livestock on complainant's plant siding could result in extra charges to the complainant.

I might say that in this case, which originated in 1940, we were in there with one of the consolidated complaints, urging that we had a right to delivery of livestock or egress without extra charge. The report of the Examiner sustained that contention. The Commission decided otherwise.

Chairman ROGERS. Just one moment, if you please. Division 2 has a case for argument following this, but we have two and a half

hours in the first case, so the parties in the Division 2 case may be excused until 2:00 o'clock.

Mr. RYNDER. I have placed before you a sketch which appears in the appendix to my exceptions. It was largely
849 taken from the map which is Exhibit 12 that Mr. Pierce has had attached to the board here.

By reference either to that sketch or the map you will note that the main line of the New York Central Railroad runs along the northern edge of the Cleveland Stock Yards.

Commr. LEE. Is that the red line on the wall map?

Mr. RYNDER. That is it [indicating]. Then, coming off from the line of the New York Central there is 132 feet of track which belongs to the New York Central. Following down the yellow line, which is black on my sketch, there are 1,619 feet of track of which the Stock Yards is the owner. Then, coming again to the red line, that is track of the New York Central which connects with and serves seven industries in the stockyards neighborhood.

Commr. MILLER. Mr. Rynder, do you have to go over that stockyards track to get to the New York Central track on the south?

Mr. RYNDER. Yes, sir; there is no other way of doing it. Because it will be an important part of my argument, I would like to emphasize at this time that our plant, as well as the other plants in this district, are connected not with the stockyards track but with the tracks of the New York Central used in its general terminal service. Those other industries are Earl C. Gibbs, Inc., Kreinberg and Krasny, Standard Beef Company, Hughes Provision Company, Koblenzer Brothers, Theurer-Norton Pro-
850 vision Company, and Swift and Company.

At this point I would like to say, in the short time I have had I have, of course, read the defendants' reply to exceptions, and a great many cases are cited there and I think you will find that not one of them involves this situation of the track of private ownership being in effect or connecting up two parts of a line-haul railroad. I think that is very important in this case. I think that all the cases cited involve the use of private sidetracking going to an industry or industries beyond it. Swift and Company is not using the stockyards track, and we are served by a New York Central track.

Now, the fact is that from 1910 until November 12, 1938, the carriers at Cleveland, defendants in this case, provided reciprocal switching charges in connection with the delivery of livestock and all other traffic, under which it was delivered to these industries at the flat Cleveland rate.

On November 12, 1938, that reciprocal switching charge was canceled, so no tariff means existed of moving a carload of livestock arriving via the Pennsylvania, let us say, but the New York

Central did not cancel its own tariff which provides for the delivery of livestock and all other commodities, that is, to all industries upon its line. That remains unchanged, as the Examiner finds. So far as the tariff goes, we would still be entitled
851 to the delivery of that livestock. However, the New York Central has refused to deliver livestock since the date of that change in its reciprocal switching tariff.

Commr. BARNARD. Why has it refused? Has it refused because the Stock Yards Company would not permit it to?

Mr. RYNDER. Yes, sir.

Commr. BARNARD. That is, they have a lease arrangement?

Mr. RYNDER. Yes.

Commr. BARNARD. Do you think you could control that private track of that Stock Yards Company under that lease arrangement?

Mr. RYNDER. I am hoping to come to that.

What I have been trying to get before you at the moment is simply the basic facts.

The New York Central also receives and delivers all other classes of freight over the same tracks and uses them for general railroad purposes.

Aside from our assertion that the New York Central is failing to perform its statutory duty in the delivery of freight, and in accordance with its tariffs, we have here a case of discrimination.

On this small sketch I have handed to you, you will note that the Ohio Provision Company, the Long Dressed Beef Company, and the Lake Erie Provision Company are located adjacent to the New York Central main line. That would be right up here [indicating], and the New York Central delivers
852 livestock to those companies while refusing to deliver them to the plant of the complainant. We believe the violations of law established are these: Failure to make delivery in accordance with statutory duty and tariffs.

Discrimination between complainant and three competitors and a discrimination between commodities.

The question involved is whether the New York Central may refuse delivery of livestock and for that matter all other freight because the 1,619 feet of track connecting two of its own tracks is owned by the Stock Yards, although used for general railroad purposes for the last 35 years.

The Examiner proposes to dismiss the complaints on numerous grounds, which may be summarized generally, as follows: that the Commission is without power to grant relief, even though it thought there were a violation of the Act, and without power to enter an order under section 14—and I suppose also under section 16, although they do not state so.

Secondly, that the 1,619 feet is a private track over which the

Stock Yards may exercise complete domination, even though used in common-carrier service, connecting two New York Central tracks for 35 years, and at present used to serve seven industries; that the refusal of the New York Central to conform to its tariff is merely a technical matter and not a material fact, and that
853 it is not the duty of the Commission to decide whether a refusal of the Stock Yards Company to permit the use of its track for the movement of livestock is legal, although that company is a defendant in this case.

We have taken 14 exceptions to the Examiner's report. I will hurriedly pass over several of them because I do not think they would in any way affect or change your decision.

The Examiner at one point states that four industries are served over this track. I believe the number should be seven.

We believe the Examiner's report is inaccurate as to the extent of the unloading facilities at the Swift plant, but I do not think the decision can turn on that point.

He mentions also that the jurisdiction of the Secretary of Agriculture as to charges on direct shipments for services beyond the unloading pens is under the Packers and Stockyards Act. That is true, of course, but only applies to service rendered and not as to car loading on industry tracks.

He refers to the nonpayment of yardage charges over a certain period. I think I have already explained that, and the final decision of this Commission in 255 I. C. C. 579.

Now, the Examiner says that one justification for the refusal of the New York Central to make delivery of livestock is that in the lease between the New York Central and the Stock Yards Company, there is a clause providing that the railroads shall have the free and uninterrupted use except for competitive traffic.
854 We have contended in our exceptions there is and can be nothing competitive here.

Commr. BARNARD. As I understand this case, back in the old days you were worth something to this Stock Yards Company because you used the pens and paid them rent, and then they sold you feed. Then you changed your way of getting your stock and brought it in by carload. Isn't that competitive with the stockyards?

Mr. RYNDER. No, sir. A stockyards company by Federal statute can be engaged only in the occupation of providing a depot or something for the sale of livestock. We are, I should say, the largest buyer of livestock of the Cleveland Union Livestock Yards.

I have taken as an illustration a shipment, of which the bill of lading was put in, together with several others. It started at Indianapolis. We were certainly not competitive with the Stock Yards Company in the purchase of that livestock in Indianapolis.

It cannot, as a matter of law, engage in the purchase and sale of livestock.

It was our property in Indianapolis. We shipped it over the New York Central to Cleveland. Certainly it was not competitive in that sense.

If our direction had been carried out it would have been switched to our plant, and certainly we are not competitive
855 in that sense, as the Stock Yards Company performs no switching service. The only thing that could be competitive with the Stock Yards Company, as I see it, is another stockyards company.

If that is not sufficiently plain, let me suggest that practically all of our livestock during this period—and we expect a greater amount if this condition continues—will come by truck, and I would like to know what will be competitive about that or how the Stock Yards Company can prevent that reaching our unloading pens, just as it has not been able to for some years back.

Commr. BARNARD. Of course, it could not control the operation of trucks, but certainly it can control that track that is not a railroad in the meaning of the statute.

Mr. RYNDER. Yes; but it is in our power to control the situation and not suffer.

Commr. BARNARD. The New York Central cannot do anything about it if they cannot make an arrangement with the Stock Yards Company and if they have a lease arrangement whereby they can refuse if they want to.

Mr. RYNDER. If you are correct about that, I am at the end of my argument right now.

Next, the Examiner says that the 1,619 feet of track could be abandoned without approval of this Commission. That
856 may be true, but we have not that question at this time. The track has not been abandoned, and so long as it remains in place it is our contention that it may be regulated by this Federal Commission.

This point was very definitely settled in Southern Railway Company vs. Sheahy, 18 Fed. (2d) 784. I have quoted fully from it at page 24 of my exceptions, and I will not take your time now. But I do ask attention to that case which passes specifically upon this point, that although a local track may be abandoned without the authority of this Commission, so long as it is in place it is subject to regulation by this Commission.

We also except to the finding of the Examiner that the failure of the New York Central to comply with its tariff which is still in effect is merely technical. That tariff still provides for delivery of shipments arriving via New York Central and also from connecting lines and from stockyards.

Directly contrary to such a holding as to the mere technical end of the tariff is your decision in Guyton and Harrington Mule Company against L. & N. R. R. Co., 50 I. C. C. 546, which we quote in our exceptions as Case 29.

The Examiner also holds that the Commission is without power to afford relief by an order under section 1, paragraph (4), and I think it would follow under section 1, paragraph (6), that
857 it may not order a carrier to furnish transportation service required by statute and by its published tariff. The authority for this is the decision of the Supreme Court in 1916 in United States against the Pennsylvania Railroad Company, 242 U. S. 208, 61 L. ed. 251.

That case involved an order of this Commission requiring in effect that carriers build or otherwise provide tank cars which they did not possess. The Court repeatedly points out that it is dealing only with that phase of the subject, the power of the Commission to order the carrier to build a facility which it does not possess, to wit, tank cars.

Now, it is one thing to say to the Commission it may not order carriers to build tank cars or a facility which they do not possess, and quite another thing to say that the Commission may not require carriers to use without discrimination tank cars or refrigerator cars or any other facility that is in their possession and in their use. I have discussed the cases following that quite fully at pages 32 and 43 of our exceptions, and ask your attention to them.

The most complete discussion of that case that I have been able to find in the decisions of this Commission is York Manufacturers vs. Pennsylvania Railroad, 107 I. C. C. 219, pages 38 and 39 of our exceptions.

The Commission there held that the Pennsylvania tank car decision did not prevent it from requiring the extension of reciprocal switching arrangements in York, Pennsylvania.

858 I think, too, that the decision of the Supreme Court in these recent terminal cases makes it quite clear that the Commission has power to enter appropriate orders under section 41. The Supreme Court there said that the Commission has power to determine and order what practice is or will be just and fair and reasonable to be thereafter followed, and to make an order that the carrier cease and desist from violation to the extent the Commission finds a violation does or will exist.

If you have the power to tell a carrier where it may not put a car in connection with delivery to certain industries, it seems to me it almost follows as a matter of course you have the equivalent power to tell him where he must put the car in order to perform a delivery under the law and under his tariffs.

An order exactly similar to that which we are seeking here was

made by the Commission in a very early case, Baltimore Butchers Livestock Company against P. B. & W. R. R. Company, 20 I .C. C. 124. I have that in my exceptions. That order was never contested and was obeyed.

The Examiner also holds that it is unnecessary to determine whether a refusal of the Stock Yards to permit use of the track is illegal. I think perhaps a better way to state it is whether the New York Central may refuse to deliver livestock trans-
859 ported by it to Cleveland, upon side tracks connected with its own lines.

Swift and Company does not desire to use any part of the 1,619 feet. It operates no engines or anything else of a common-carrier nature, any more than it does when the 1,619 feet is used for the delivery of a carload of coal or the movement out-bound of a carload of packinghouse products. However, we did make the Stock Yards a defendant in this case. We did that under Volume 49, U. S. C. A. 42, that is the appropriate section of the Elkins Act.

Commr. BARNARD. Mr. Rynder, do you agree that the lease between the New York Central and the Stock Yards Company is a valid lease?

Mr. RYNDER. I was hoping to get rid of some of this ground work and I hoped to discuss fully the point then that is in your mind.

If I may interject, however, a comment and answer at this point, I would say this:

I think a man cannot lease a piece of property to a railroad, whether it be a sidetrack, a refrigerator car, or a tank car, or anything else you please, upon the condition that the carrier shall use that so as to produce a discrimination under the Act or otherwise to violate the Act. I think to that extent I might state that the lease, if that is a proper interpretation of it, is invalid.

Now, I stated we made the Stock Yards a defendant under
860 the appropriate clause of the Elkins Act, which says that

"It shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers."

Now, there have not been too many cases under that section of the Elkins Act, but I think that all of them sustain my contention. I have cited them in my brief. I hope here to mention, I think, only two.

In the Spencer-Kellogg case, which arose at Buffalo, the ele-

vators owned by Spencer-Kellogg were receiving an allowance for elevation from the railroads, I believe, at 1 cent a bushel. To attract business they advertised to their customers that if they sent the traffic through the Kellogg elevators they would refund one-half of the 1 cent. Spencer-Kellogg was not in any sense a common carrier but they were enjoined from carrying out those contracts. I beg your pardon, it was a criminal prosecution, and they were found guilty of giving a rebate.

Another case that is quite recent and doubtless in your mind is the General American Tank Car Corporation vs.
861 El Dorado Terminal Company, 308 U. S. 422. There the tank car company was leasing tank cars to the El Dorado Company, a shipper. After certain decisions of this Commission affecting the mileage allowance on refrigerator cars, the tank car company refused to pay to the El Dorado Company—I should go back and say the original contract provided that the El Dorado Company should pay the tank car company, I believe, $35 a month. The tank car company would pay to the El Dorado Company the mileage received from the railroads. The mileage amounted to more than $35 a month. The tank car company refused to pay out of the mileage more than $35 a month, and suit was brought by the El Dorado Company to recover under the contract. The case, as you know, reached the Supreme Court which said that it should have been stopped until they had applied for an administrative ruling from this Commission. That administrative ruling was given.

Now, the General American Tank Car Corporation was not and is not a common carrier for hire. It only furnishes tank cars upon lease to railroads or to individual shippers. Yet, your holding is that the tank car company may not take that mileage and give to the shipper more than the rental paid by the shipper to the tank car company. Clearly that order was made under the authority of this section of the Elkins Act or else you would not have any authority to make it.

The Examiner also says that the conclusion is justified
862 by your decision in Limits Industrial Building Corporation, 258 I. C. C. 438. There is quoted a paragraph from that decision. And I now quote:

"Common carrier services over private tracks cannot be expected, and certainly cannot be compelled by us, where obstructions against the use thereof, not caused by a carrier, prevent it from furnishing the desired transportation upon those tracks. Nor is it within our jurisdiction to order a carrier, or any other party, to take steps to remove such obstructions.

"In that proceeding intervener, Taylor Forge and Pipe Works, fenced off a section of the spur track on their property, previously

in operation, thus preventing defendant therein, although willing to do so, from continuing freight service over that spur to and from the plant of the complainant therein. A judicial decree therein, not against the defendant, but against the predecessor of the complainant, also prevented the desired switching service. It is not within our jurisdiction to order a carrier, or any other party, to take steps to remove obstructions, not caused by a carrier, which prevent the carrier from performing common-carrier services over private sidings and private industrial tracks."

To understand that case completely you ought to read the decision of the United States Supreme Court in the Greenlee Foundry Company vs. Borin Art Product Company, 379 Illinois 494.

863 There was involved a street in Chicago and along it had been built a little stretch of private sidetrack. There was an injunction by the court restraining the builder from building the track, as it was not connected with the two common-carrier tracks.

We think that in that same decision the controlling features were stated as follows by the Commission, where you say:

"Rather, the question for decision is whether the obligation to remove the obstacles, both legal and physical, which concededly now prevent operation over the spur track, legally rests with the defendant or with the complainant. That clearly depends upon whether the spur track is a part of defendant's own track facilities and made available by it for public use, or is a private industrial track. If the former, the duty is upon defendant to keep it open for public use, and complainant, as well as other shippers, would be entitled to needed services over that track."

Now, let us see how that matches up. Let us see whether this track is a part of defendant's own track facilities. It merely connects two parts of the New York Central. From a legal standpoint this 1,619 feet might as well be somewhere between Toledo and Sandusky.

Commr. ALLDREDGE. May I interject? Was the Com-
864 mission trying to distinguish its powers there under sections 19 and 14?

Mr. RYNDER. Section 19—that is the one about obtaining a connection?

Commr. ALLDREDGE. And operation of a private sidetrack.

Mr. RYNDER. Well, I have since this case started doubted the effect of that particular section because the track connection is already here. We are not asking that it be made.

Commr. ALLDREDGE. But section 19 goes on and says, "The carriers to furnish cars through the movement of traffic to the best

of its ability without discrimination in favor of or against any such shipper."

Mr. RYNDER. I think a carrier might be violating the latter part of that section in failing to furnish the cars without discrimination, and here they are not operating them as to livestock. True, they are operating as to other commodities.

Commr. ALLDREDGE. In that case you cited I was wondering whether the Commission predicated its conclusions on section 19 or section 14.

Mr. RYNDER. Well, Mr. Commissioner, in that case, if I may use this 1,619 feet as illustrative of the condition at Chicago, the use of that track had been enjoined by the Supreme Court of the State. That was one obstacle. The railroad was not operating over it. That track did not connect a part of the B. & O. with another part of the B. & O.

865 Chairman ROGERS. There was a physical obstruction there, too, which made it impossible for the carrier to operate?

Mr. RYNDER. That is right.

Commr. ALLDREDGE. Is your complaint here under section 19 or setction 14, or both of them? You have a private sidetrack here, don't you?

Mr. RYNDER. This is our private track from T to V on Exhibit 12.

Commr. ALLDREDGE. You want service to and from that track and partly over it?

Mr. RYNDER. Yes, sir.

Commr. ALLDREDGE. Are you claiming that under section 19?

Mr. RYNDER. Well, if Your Honor please, it follows this red line, that is the New York Central line, up to our plant boundary. The green line beyond is our private side track. We are connected not with the 1,619 feet but with the New York Central. Now, the New York Central has not refused a switch connection to us.

Commr. ALLDREDGE. Has it refused to operate over it?

Mr. RYNDER. It has not refused to operate over it except as to livestock. It is bringing in all our supplies, except livestock. we may have to ship from that plant, except livestock.

Commr. BARNARD. Well, that has been done by the Stock Yards Company. It is doing that, it has reserved the right

866 to do that.

The thing, Mr. Rynder, that seems to impress me, that I would like to have your views about, I think your quarrel is with the Stock Yards Company and not with the New York Central. They can't do anythinng else about this situation if that

is a valid lease. If you can make your peace with the Stock Yards Company, then the situation might be different.

Mr. RYNDER. If the majority of the Commission is of your opinion then I am through.

Commr. BARNARD. Well, if that is a valid lease they have the right to restrict the use of that track to what they want. It is not a railroad.

Mr. RYNDER. I think I had better come to that point. If it is a valid lease, would Your Honor contend that this tank car company can lease its cars to the Baltimore & Ohio or the Santa Fe, or its refrigerator cars, as it does, and say in that lease, "You shall not use these to carry the shipments of the Georgia Peach Growers Association"?

I say no; that when a man puts his property to a public use he must take with it the burdens that the law imposes upon that public use of the property.

Unfortunately, one of my clients was among the earliest to find that out, about the time your Interstate Commerce Act became effective, when they had a contract to carry meat from the Missouri River to New York for about 35 cents, or something
867 like that, and it was a perfectly valid contract. They continued to operate under it although the carriers in filing tariffs filed a higher rate. It was certainly a valid lease when it was made, but the courts held that it became invalid by operation of law.

Now, coming to the point that Commissioner Barnard has just mentioned—and I am skipping by a part of my exceptions under which I think we are clearly entitled to an order under section 3 and section 2 and under the decision in Richmond Chamber of Commerce against S. A. L. Railway, 44 I. C. C. 455, and several other cases that I have there mentioned. I would like now to get to the point Commissioner Barnard has just raised.

I do not think when you lease your facilities to a railroad, especially after the passage of the law, you can make a valid lease that will bring about violations of the law. Let me now try to pursue that point.

I would like to invite your attention first to the exact language of section 1 (3) of the Act, defining a railroad.

"The term 'railroad' as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad and also all the road in use by any common carrier operating a railroad, whether owned or operated under
a contract, agreement, or lease, and also all switches, spurs,
868 tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or

property designated herein, including all freight depots, yards * * *."

In other words, once that track has been put in the public service—and it has been put into that service for something over 35 years and is still in the public service—it becomes a part of the railroad and must be operated by the railroad under all its obligations as a common carrier, both as to the duties required to be performed and as to the avoidance of discrimination or undue prejudice.

Commr. BARNARD. Without the railroad having any interest in it financially at all?

Mr. RYNDER. Oh, it has an interest in it financially. It enables it to serve seven industries which give it business.

Commr. BARNARD. I am not speaking of that kind of interest, I am speaking of ownership interest.

Mr. RYNDER. It has no ownership, no, but it is maintained and it has been maintained for 35 years.

Commr. BARNARD. You think that is a dedication under the lease arrangement made with the New York Central? Do you think that amounts to a dedication?

Mr. RYNDER. I hope to show you in one case it certainly has been so held.

The New York Central has maintained that track for 35
869 years without expense to the Stock Yards Company.

Commr. BARNARD. Of course that is part of the lease arrangement. The Stock Yards pays the tax and keeps up everything else.

Commr. ALLDREDGE. I do not mean to interrupt your argument, but there is one thing I am particularly interested in.

I do not see that the Examiner specifically discussed the possible obligations of the carrier under its sidetrack contract, reviewed in the light of section 1 (9).

Mr. RYNDER. No; I do not think that is mentioned.

Commr. ALDREDGE. In making this contract for the operation of this sidetrack, did the New York Central in that contract make any reservations about switching the livestock to you?

Mr. RYNDER. No; not in the early years. I think in 1935 they amended their contract by putting in that clause that I mentioned a while ago about not being used for competitive traffic.

Commr. ALLDREDGE. In other words, when they made the contract to operate your private sidetrack, they did insert the reservation about not furnishing the services for the cars on competitive traffic?

Mr. RYNDER. That was not in existence from 1910 to 1935.

Commr. Barnard: That was because you were carrying on a different kind of arrangement. You were worth something

870 to this Stock Yards Company then, but you are not any more. Didn't they have a right to do that?

Mr. RYNDER. Well, I am not arguing the case here between us and the Stock Yards Company.

Commr. BARNARD. I think that is where your quarrel is.

Mr. RYNDER. Well, if you are correct, of course, Your Honor, there is nothing to my argument.

There is nothing in section 1 (3) that says that the track used by the railroad company, in order to become a part of the railroad subject to your jurisdiction, must be condemned or dedicated. The only condition is that it must be used or necessary.

There was a case out at Denver which I think is very much in point as to the question you have been asking; that is the Ayers Mercantile Company case.

Now, there we did not have the trunk-line railroad connected on the end of a private sidetrack. The Ayers Company owned a private sidetrack which went into its industry and into several other industries. It sought to enjoin the use of that track, which was its own private track, by the Union Pacific to reach industries beyond.

The court said:

"This railroad company had an established line of railroad through the city of Denver, and the tracks upon Blake Street authorized by the ordinance were spur tracks from
871 its main track for the benefit of parties who expected to build warehouses on vacant property abutting upon that street. * * * The suggestion that the license was unauthorized because the permitted tracks were not for public but for private use, cannot prevail. In a sense every spur track to a private warehouse, manufacturing or trading establishment, is for the private use of those who own and conduct the business therein. But, in a larger sense, and in the true sense, every such railroad track is for the public use and for the public benefit, because it enables the public to exchange its commodities for those of the parties who conduct their business upon the track in a more facile and economical way."

Then, at that point the court said:

"Even granting the contention that the original occupation was permissive, the character of operation might change, as apparently it did here. The gates ceased to exist after 3 years. The railroad company added additional burdens to the trackage in the way of switch-back movements, which were a part of its general switching system, and, according to the evidence, these switch-back movements to the other industries occurred every day."

It is exactly the situation you have here and over private track of a man who owned the track and owned the land and was trying

to enjoin the railroad company for that reason from running its engines over and making deliveries.

872 Now, there is no doubt that this track has been devoted to the public service from at least 1910 until the present date as to all traffic, except livestock, and from 1910 to 1938 also covering livestock.

I think one of the most informative cases on that subject is the Union Lime Company against the Chicago and North Western, 233 U. S. 211. The question there was the right of a railroad to condemn land to run a sidetrack across the owner's land to an industry just beyond. That right was fought upon the ground at that time on the basis it was for a private use. The Supreme Court said:

"Such track when built becomes a portion of the trackage of the railroad. The fact that its initial cost is borne by the party primarily to be served, with provisions for subsequent equitable division of such cost, does not make it a private track or change the nature of its use. Over it the products of the industry find their way into the markets of the world, and every consumer is directly interested in the lessened cost of such products resulting from the building and operation thereof. That these products are supplied by a single owner, or by a limited number of owners, affects the extent, and not the nature, of its use—the track is nonetheless a part of the avenue through which the commodities reach the public."

Commr. Barnard. Does your complaint allege a violation

873 of section 19 (a)?

Mr. Rynder. No, sir; and I think I have explained the primary reason for that, that we are not refused a track connection.

Then continuing, the Court said:

"It is urged, further, that the statute is necessarily invalid because it establishes as the criterion of the Commission's action the exigency of a private business. This objection, however, fails to take account of the distinction between the requirements of an industry and the trade which may warrant the building of a branch track, and the nature of the use to which it is devoted when built. A spur may, at the outset, lead only to a single industry or establishment; it may be constructed to furnish an outlet for the products of a particular plant; its cost may be defrayed by those in special need of its service at the time. But nonetheless, by virtue of the conditions under which it is provided, the spur may constitute at all times a part of the transportation facilities of the carrier which are operated under the obligations of public service, and are subject to the regulation of public authority."

I have cited on that point several more cases. One is Morgan Run Railway Company against Public Utilities Commission, 120

Northeastern 295. I wish you would read at least what I have in my exceptions about it, because it was decided
874 in Ohio under a statute very similar to your own.

We have had very recently a case that came up in Illinois, Alton Railway against Illinois Commerce Commission, 305 U. S. 348. There the Court said:

"The switch track in question extends from the carrier's main line"—and so forth, to certain other industries. It goes further and says, "upon land largely, if not wholly, owned by that company"—that is, the Peoples Gas and Light Company.

Alton was trying to get rid of the operation of that track, and the Court said, referring to the Alton argument:

"But, in making that and similar arguments, appellant ignores the decision in this case of the Commission, the State Supreme Court, and as well the ruling of this Court just indicated, to the effect that the track in question is one built for industrial purposes on and across public thoroughfares; a track that has become a part of the main line of the carrier's system, and, though constructed without cost to it on lands owned by others, is open to public use; a track which has long been and is being used by the carrier for its own benefit and by it may be used, with extensions if any shall be made, to serve the public at large."

That is a case certainly similar in principle to the one I have here.

Now, this 1,619 feet of track does not run to our plant
875 but to a connection with the New York Central, and has been used in the public service since 1910 at least. Until 1938 there was no attempt to restrict the use of the track for any purpose, and since 1938 the track has been used to serve seven industries in all other respects except livestock.

The 1,619 feet of track is not a part of the sidetrack serving the Swift plant. The Swift siding is connected with a track of New York Central ownership.

I believe such a use of the track by the New York Central over that period of years constitutes a public use, and that even though the track may not have been formally condemned or dedicated, it has been for that period of time devoted to public use, namely, all classes of traffic to a growing group of industries which finally have become seven.

Now, in concluding the argument, I would like to make one request of the Commission. If you should sustain what Commissioner Barnard evidently has in mind, I would appreciate it very much if the decision were placed upon that basis.

On the other hand, if you should decide in substance that there is a violation here of the Interstate Commerce Commission Act, which you may well do, but you have not the power to make an

order under section 1 (4), may I take the liberty of asking the Commission to state that unequivocally, because if lack of power be the stumbling block, then I should like to be able to pur-
876 sue the case in court untrammeled by an inability to distinguish upon which ground the case is dismissed, if it should be dismissed.

I would like to save whatever time I have for my reply.

Mr. PIERCE. If the Commissioners please, is it satisfactory if Mr. Farmer, on behalf of the Stock Yards Company, appears at this time? We had an agreement between us to divide the time allotted to the defendants.

Chairman ROGERS. That will be all right.

Argument of Matthews S. Farmer

Mr. FARMER. If the Commission please:

Those points upon which the Cleveland Union Stock Yards Company disagrees with the Examiner's proposed report were of such a very minor nature as not to justify the filing of exceptions, which the Stock Yards Company has not done. It has, however, taken the liberty to reply to the exceptions as filed by Mr. Rynder on behalf of Swift and Company.

I shall not take a great deal of time because I believe that this controversy, as has been suggested by this Commission, has developed into a quarrel betwen the railroad and Swift and Company.

Before beginning my argument I desire to answer just two or three of the points which Mr. Rynder made.

He was asked if the Stock Yards Company did not have a right to enter into a sidetrack agreement with the New York Cen-
877 tral to limit the use of it to business that was not competitive. His answer was that he believed that the Stock Yards Company had no such right because it entailed a discrimination.

Now, I say to this Commission that these seven industries that he talked about, which must use this 1,619 feet for service, have all of the same rights and privileges and are limited in the same manner as Swift and Company.

Commr. PORTER. The limitation does not amount to anything to them, does it?

Mr. FARMER. Yes.

Commr. PORTER. As to livestock?

Mr. FARMER. Yes; they cannot do it either. It just so happens they do not try to bring in much. Swift and Company does, but it so happens that some of the other packers do not try to bring

in livestock, but they cannot do it. They are limited just as Swift and Company is limtied.

Chairman ROGERS. What is the purpose of that limitation? Is it to force the use of the stockyards?

Mr. FARMER. Yes; that is what the stockyards were built for. It is under the Packers and Stock Yards Act, it is a public market. This whole business and whole enterprise out there is engaged in livestock, and to use a track right in front of its property and on its land that it pays taxes on, pays taxes on the land and on improvements, and then, in spite of that, they say this is a
878 public dedication. As I understand a public dedication by permitting the use, it must be allowing the use of it to the general public and in such manner that it is inconsistent with any other theory of ownership or control.

This record is replete with evidence from the very beginning, 1910 and even before that—and I think the first agreement goes back to May 10, 1899. It has always been by agreement and always has had a cancellation clause in it, so the Stock Yards Company, if it saw fit to do so today, could, by the exercise of its ownership, cancel on 30 days' notice for all purposes.

Commr. PORTER. Without the consent of this Commission?

Mr. FARMER. I think so.

Chairman ROGERS. Then what would happen if they did?

Mr. FARMER. That would open the door, naturally. It would inconvenience the packers and everybody out there, because they do get coal and salt and hides and various other things.

Chairman ROGERS. By means of this lease?

Mr. FARMER. It is not a lease; it is a mere sidetrack agreement.

Chairman ROGERS. By means of that the New York Central dictates as to where it gets its livestock, doesn't it?

Mr. FARMER. No; it does not.

Chairman ROGERS. How do you get around it?

879 Mr. FARMER. The New York Central does not dictate to Swift and Company where it gets its livestock, or anything about it. It says the Stock Yards Company has limited the use of the track so they cannot deliver stock, livestock, to Swift and Company. It can be delivered through the Stock Yards Company some 1,600 or 1,700 feet up the street, and has been for years and years. Swift and Company, up until 1936, I think it was, was a member on the board of directors of the Cleveland Union Stock Yards Company, until by court action they were forced to dissolve, I think it was by the Court of Appeals of the District of Columbia.

I am not going into all these various sidetrack agreements, not only with Swift and Company but the other packers similarly located.

Commr. BARNARD. What do you say about Mr. Ryder's position that this traffic is not competitive with the Stock Yards Company?

Mr. FARMER. I say this, Your Honor. He has quoted at length dictionary definitions and so forth as to what was meant by that phrase in the sidetrack agreement, that it could not be used for competitive business.

Now, this sidetrack was not built for the general public. What interpretation the general public might have, or whatever any dictionary might say about what competitive business is,
880 has nothing to do with the situation as it existed between the contracting parties, the stockyards, and the railroad. They understood definitely and certainly that the denial of the use of it for competitive business meant the hauling of livestock over that track to Swift and Company or any other company. They understood that and they acted upon it and that is the reason that he is here now, because they acted upon it.

They notified the New York Central they would not permit it. They were losing their business and they might as well close up their doors if you would permit a thing of that kind. One of the biggest industries in Cleveland might as well close its doors if you would require them to furnish the use of that track for deliveries to these plants.

Now, then, if there was any doubt about it, on December 31, 1934, the Stockyards Company wrote a letter to C. M. Williams, superintendent of New York Central, which in part says:

"Competitive traffic includes certainly livestock and probably in-bound movement of meat."

Now, go beyond that a little bit, if you please, and think of it in the literal sense, of competitive business.

If any railroad uses this 1,619 feet of the stockyards' property on which it is paying taxes, not only on its land but on the improvements, to the State of Ohio, if it uses that for the purpose of making a delivery to Swift and Company which they
881 must accept through the Stock Yards Company and from which the Stock Yards Company would derive revenue, I ask you, under any fair interpretation or definition of competitive business, if that is not competitive.

Chairman ROGERS. How much track would the New York Central have to build in order to serve Swift without using the track in question?

Mr. FARMER. I suppose the same distance; I do not know. It would be at least that much.

Commr. ALLDREDGE. I am thinking now, if your argument is correct, that this is competitive with Swift, I am wondering whether or not this contract or the practice of the New York

Central is not running right into the teeth of section 19 when it says that those private sidetracks shall be operated in such a manner, to the best of the ability of the carrier, without discrimination in favor of or against any shipper.

Mr. FARMER. There is no discrimination.

There is no discrimination against anybody. Any packer in that stock yards district, the same or similarly located, is under the same restriction.

Commr. ALLDREDGE. The Examiner was wrong, then, when he said it was a violation of section 19 that was alleged?

Commr. BARNARD. I asked Mr. Rynder and he said he was not complaining under section 19.

Isn't that what you said?

Chairmain ROGERS. The Examiner said in the first page
882 of his report, "Violations of sections 13, 14, 15, 9, 18, 19, and 20" and so on are alleged.

Commr. BARNARD. Then counsel for the complainant does not know what he has in his complaint.

Mr. FARMER. The El Dorado case was cited here as an authority for making an order against the Stock Yards Company. In that case the tank car company was involved, and I want to read what the Supreme Court said in that respect. This is by Justice Roberts, who I believe commands the respect of everybody.

"Freight cars or facilities of transportation"—this is, as I say, in the case of General American Tank Car Corporation vs. El Dorado Terminal Company, and I will quote:

"Railroads are under obligation as part of their public service to furnish these facilities upon reasonable request of the shipper and therefore have the exclusive right to furnish them. They are not, however, under obligation to own such cars. They may, if they deem it advisable, lease them so as to be in a position to furnish them according to the demand of the shipping public, and if carriers do so lease the cars, the terms on which they obtain them are not subject of direct control by the Interstate Commerce Commission. If the carriers pay too much for the hire of such cars, the Commission may, of course, refuse to allow them to reflect such excess cost in the tariffs. The lessor of such
883 cars to a railroad, however, is not itself a carrier or engaged in any public service. Therefore, its practices lie without the realm of the Commission's existence."

Chairman ROGERS. What case is that?

Mr. FARMER. General American Tank Car Corporation.

Commr. ALLDREDGE. That related to the method by which railroads obtain the equipment they use.

Mr. FARMER. That is right.

Now, then, the railroad is in this position. Swift and Company

is trying to have the railroad appropriate the Stock Yards Company property for something which would put them out of business, and I say that the right of eminent domain is involved squarely in this case. You cannot take the Stock Yards' property, that property which it has rented on sidetrack agreement always with the cancellation clause in it, and confined to business which is not competitive.

Commr. ALLDREDGE. Section 19 says that those sidetracks shall be operated and cars furnished for service thereon without discrimination.

Mr. FARMER. That is right.

Commr. ALLDREDGE. If the Commission has the matter presented to it and it finds that, lease provisions or no lease provisions, there is discrimination, what is the Commission's duty under the Act?

884 Mr. FARMER. Would the order to the Stock Yards Company be for it to permit the New York Central to use the track, or other railroad companies, without compensation? The Fifth and Fourteenth Amendments to the Constitution of the United States are entirely involved in this case, and if it came up we would be entitled to a jury trial.

I want you to look at this map. Here is Sixty-fifth Street, one of the prominent thoroughfares of the West Side of Cleveland, traffic moving from the Lake area clear into the south highways, branching out everywhere. Here [indicating] is the front part of the Cleveland Union Stock Yards Company's property. It is valuable property, if you please. By a mere order of this Commission, if it saw fit, would the Stock Yards Company have to donate that property for the service of Swift and Company? Would they have to do that without compensation? Must it pay taxes on the land and on improvements without the least consideration being given to that fact and without a trial by jury, as they must have under the Federal Constitution, or a trial by jury under the Ohio State Constitution?

Now, this section 42, the Elkins Act, is certainly loosely drawn. I do not believe would disagree with that.

I cannot and do not believe anybody can seriously contend that you can donate the Stock Yards property so as to have delivery of livestock to Swift and Company.

885 Mr. Rynder objects to the finding of the Examiner as to the fact that the Stock Yards Company is under the Department of Agriculture. Well, it is; there is no question about it, a stockyards company is clearly under the Department of Agriculture.

Now there is a provision, of course, that there shall be no conflict as between the Secretary of Agriculture and the Interstate

Commerce Commission. But if I understand anything at all about the litigation which has arisen out of this stockyards question, it is that this Commission has jurisdiction only under section 15 (5) of the loading and unloading of livestock, and that is not involved on this track.

Commr. MAHAFFIE. What kind of payment is provided for the use of this track under the sidetrack agreement?

Mr. FARMER. None; there is no provision for the payment of taxes by the carrier, or anything else.

These people live out here as a sort of happy family, we hope, and we hope they will continue that way. They have got to favor one another. It is certainly common, ordinary business prudence for the Stock Yards Company, if it has a track and as long as it does not inconvenience them, or as long as they do not want to sell their property, to let others use it for the purpose of hauling their hides and so on. But, by the same token, it is also common, ordinary business prudence not to let them use it to drive them out of business.

886 Commr. MAHAFFIE. Are these other concerns located along the track also customers of the Stock Yards Company?

Mr. FARMER. Yes.

Commr. MAHAFFIE. Is there anything improper about your furnishing free facilities for their use that are not for the use of others? There is no discrimination?

Mr. FARMER. I say Swift and Company is treated exactly as everybody else. There is no complaint as to that.

Commr. MAHAFFIE. Suppose they are all customers of yours and you are a public utility and you furnish them free, valuable facilities. Is that all right under the Stock Yards Act?

Mr. FARMER. Are you confining that? I think that is a purely private enterprise, we can do it or not.

Commr. MAHAFFIE. I thought you were a public utility.

Mr. FARMER. Yes; we are a public utility as far as the stockyards are concerned, but this is a private industrial track, you might call it.

Commr. MAHAFFIE. It is part of your plant as a stockyards company.

Mr. FARMER. Yes.

Commr. MAHAFFIE. My point is, as a stockyards company, as a public utility, and in a position to furnish free to its customers facilities that are part of its plant.

Mr. FARMER. I think it can. This Commission has held—I cannot recall the case at the moment; it is in the New York

887 Central's brief—this Commission has held with respect

to a sidetrack, private sidetrack, the railroad has the right to furnish it or withhold its use, as it sees fit.

Mr. RYNDER. Would you mind if I asked one question for clarification?

In what you say as to all being treated the same, I take it you mean in industries connected with the 1,619 feet of track, but you are not trying to say the three packers located north of that are also included?

Mr. FARMER. I am not trying to say that. I am saying, as I understand your charge of discrimination, that is not so. There are three packers, however, who are located right on the main line of the railroad and, of course, they are served by the railroad on the main line.

What I am saying now is that all these people down here [indicating], who must use the 1,619 feet of the stockyards track, if they are to get deliveries of livestock or railroad service, are the same or similarly situated.

Commr. BARNARD. They all get the same treatment?

Mr. FARMER. Absolutely the same treatment.

I say again, and I want to repeat it, those located down here use this 1,619 feet of stockyards property and enjoy the same rights, the same privileges, the same treatment as Swift and Company who is also located there.

Commr. ALLDREDGE. If we are going to consider discrimi-
888 nation, do they enjoy the same privileges as the stockyards?

Mr. FARMER. With respect to everything except livestock. But that is the business of the livestock yards, Mr. Commissioner.

Commr. ALLDREDGE. You said the stockyards were competitors with them as far as livestock?

Mr. FARMER. I said that was competitive business. I have never said or argued that there was competition of Swift and Company with the stockyards. We do not slaughter, we do not sell meat, we do not do anything of that kind. But I do say, under section 15 (5), that it is the obligation of the carrier to unload, and the railroads use the stockyards as their depot, that is the only place they unload livestock in the whole city of Cleveland. What I say is that the stockyards would enjoy the revenue if Swift and Company took its deliveries through the pens, the purpose for which they were built, its business, and it is regulated by the Department of Agriculture.

Commr. ALLDREDGE. In buying livestock are these packers competitive with the stockyards?

Mr. FARMER. No; as the Stock Yards Company does not buy or sell livestock, nor meat or anything of that kind.

Commr. ALLDREDGE. You spoke of competition. Just what does

that mean? Competitors have to engage in business to make competition.

889 Mr. FARMER. First of all I argued it did not make any difference what the dictionary says competition is. When they used the clause, the railroads understood and the Stock Yards Company intended them to understand that they could not use the 1,619 feet for delivery of livestock directly to plants of packers.

Commr. ALLDREDGE. Because that is competitive business?

Mr. FARMER. Because they used the words "competitive business." How is it competitive? In this sense only, and I hope the Commissioner will understand this, if they use the Stock Yards Company's track for a direct delivery to any of these fellows down here [indicating], any of these packers, then the railroads have passed by the depot, which happens to be the stockyards pens, and the Stock Yards Company enjoys the revenue from those pens. That is what they meant by "competitive business," regardless of any technical interpretation or definition of English you may apply. It is not competitive in the general sense; however, it would not be correct if you thought it did not prohibit the use of these tracks to deliver livestock to the packers.

Commr. ALLDREDGE. You did it under a term referred to as "competitive business."

Mr. FARMER. What difference does it make? They understood if they delivered livestock, that meant competitive business.

890 Commr. ALLDREDGE. It makes a lot of difference if we are trying to determine whether there is discrimination here.

Mr. FARMER. I think not.

I say there is no discrimination with anybody who is the same or similarly located on this track, who requires the services of this 1,619 feet.

We cannot deny the fact that Long Dressed Beef Company and two others are on the main line of the New York Central and they can get their livestock. We could not say to the New York Central, "You cannot deliver to those fellows on your main line," because that would not involve us.

Commr. BARNARD. If there should be such a thing as discrimination, the New York Central Railroad is not responsible for that, is it?

Mr. FARMER. No.

Commr. BARNARD. The Stock Yards Company is responsible?

Mr. FARMER. That would be correct. That is my opinion.

Commr. ALLDREDGE. That would be a nice way out if the railroad entered into contracts all over this country that had all sorts of clauses in them, that would permit the railroad to escape.

Mr. FARMER. I do not think there is any such thing of any such magnitude involved here, Mr. Commissioner, and I do not see how you can consider it that way. It is purely a private sidetrack they own.

891 Commr. ALLDREDGE. This law relates to private sidetracks particularly and it says that they shall be operated by the railroad without discrimination.

Mr. FARMER. It also says, if you are going to say "private sidetrack," it could be abandoned without the consent of this Commission.

Commr. ALLDREDGE. What difference does that make, as long as the sidetrack is being operated and the law lays down the duty to the carrier as long as it is being operated? What difference does it make whether it were an abandoned track or not?

Mr. FARMER. I say that the Examiner has not held it was an abandoned track as far as this service was concerned.

Commr. ALLDREDGE. Why don't you give me an answer in response to legitimate questions? What about this law? It is our duty to administer it, isn't that so?

Mr. FARMER. I do not think the law means to compel the Cleveland Union Stock Yards Company to furnish its private track to Swift and Company or any other packer for the unloading of livestock. I do not think it means that.

Commr. ALLDREDGE. I did not ask you that. I asked you about the carrier's duty, that permitted itself to be tied up with a contract where it could not perform the service without discrimination.

Mr. FARMER. I assume they were in perfectly good faith about it. I think they felt that the Stock Yards Company had a right to make that contract. It is purely, as I say, a contract that can be canceled in 30 days.

I say that this Commission has no jurisdiction over the Stock Yards Company in this respect, that they cannot take its private property for private use any circumstances; that they cannot take this property for public use under any circumstances, because it has no jurisdiction. That must be done, if at all, through the courts with properly exercised powers involving the question of eminent domain with a right of trial by jury and all those things.

Chairman ROGERS. Mr. Farmer, can you tell me just briefly, to clarify my mind a bit, how would it save Swift any money if this traffic was handled as Mr. Rynder wants it to be?

Mr. FARMER. I do not know, I cannot answer your question.

Chairman ROGERS. What would be the difference in the method if it were handled like Mr. Rynder wants it to be and in the method it is now handled?

Mr. FARMER. The difference would be, it would be unloaded in

chutes of Swift and Company directly by virtue of the use of this track.

Chairman Rogers. Where are those chutes located?

Mr. Farmer. Swift and Company, over here [indicating], on this green line.

892 Chairman Rogers. How much of the track would they have to use in order to get over to those pens?

Mr. Farmer. 1,619 feet, right here in front of the stock yards.

Commr. Manahan. You mean they have to come in that way?

Mr. Farmer. Yes. Here [indicating] is the main line of the Big Four, the New York Central. This entire yellow line is a track of the Stock Yards Company on which it pays taxes, not only on the land but for the improvements which are separately appraised and assessed.

Chairman Rogers. Just to make it clear in the illustration, if, for example, this red line were drawn on up and connected in with the main line, assuming that there were possible and were done over at the Swift plant, then they could serve Swift directly and you would not be involved?

Mr. Farmer. You mean if they would run Sixty-first Street? If they connect with the main line of the New York Central, they would not be using our track. There was some effort made to do that, to come over through Sixty-first Street, but I think the courts of Cleveland enjoined it.

Chairman Rogers. The Commission would have power to order that, probably.

Mr. Farmer. It would be over a street of the City of Cleveland. They would have to condemn part of the Lake Erie Provision Company in order to make connection with the

893 main line.

Chairman Rogers. If they were served directly into their pens, they would eliminate certain fees they now have to pay the Stock Yards Company?

Mr. Farmer. The railroad? It is a duty under 15 (5), where they unload at the pens, unload into suitable pens at the stockyards without an additional charge.

Commr. Mitten. Swift and Company has to pay some extra stockyards fee?

Mr. Farmer. Yes; there is a little yardage charge; I do not know what the tariff is, myself, but there is some yardage charge. I assume, of course—well, I won't go into that.

You asked me the question, what I thought as to whether they would have to pay something. I assume that the Stock Yards Company under those circumstances at any event would have to charge something for its railroad. They are losing business all the time.

I have taken more time than I intended from Mr. Pierce.

Mr. RYNDER. Mr. Pierce kindly said I might take one minute of my own time to clear up this question of whether we allege a violation of section 19. It was not so alleged in the original complaint, but in my brief of October 2, 1944, in the summary, I alleged violation of that section, and I understand in the
894 practice before the Commission that is sufficient to raise the question.

Commr. SPLAWN. While you are here, I would like to raise a question.

When you buy cattle in the stockyards, you buy cattle that are unloaded by the railroad into the loading pens adjacent to these stockyards, is that right?

Mr. RYNDER. You mean when we buy it on Stock Yards property? Yes.

Commr. SPLAWN. The railroad discharges its duty when it unloads the stock at its pens adjacent to the stockyards; is that right?

Mr. RYNDER. Well, you understand, that is stock consigned to a commission merchant.

Commr. SPLAWN. The railroad has discharged its duty?

Mr. RYNDER. Let us say Jones, a commission man operating in the Cleveland Stock Yards, says, "Deliver my stock at so and so track in the Cleveland Union Stock Yards," so that I do not see how there can be any question about it. The railway has taken the property to the place it is consigned to.

Commr. SPLAWN. That is a railway depot, in other words, a lawful station, a lawful delivery when it delivers the stock into the unloading pens, and go into the stockyards, and you then purchase them in the stockyards; is that right?

Mr. RYNDER. Yes. But it is not the only one. The Stock Yards has not by any tariff said it is an exclusive delivery
895 place. As I pointed out, it is not contested that the live-stock is delivered to these three packers immediately north of the stockyards, not passing through the stockyards property.

Commr. SPLAWN. They deliver at the stockyards, or a temporary track, any place that the consignee will take them that is on their line. But in the same train there will be one carload of cattle which is unloaded into the unloading pens of the stockyards, and you buy them and deliver them into your packing plant from the stockyards. On the same train you might have a carload which you acquired before it reached the stockyards, and that stock is being brought by the same train.

Now, as I understand it, you insist it is the duty of the railroad to spot that car through the stockyards plant to your private siding; is that right?

Mr. RYNDER. The railroad tariff so provides, beyond any question, at the present time.

Commr. SPLAWN. I am not deciding the case, I am just trying to get that point as to whether or not that is a lawful delivery of the cattle.

Mr. RYNDER. If two cars came in the same train, one consigned to Jones and another to the XYZ Lumber Company, I think a lawful delivery might require the delivery of the two cars to the individual consignees.

896 Commr. SPLAWN. If you acquire cattle in the stockyards from this commission merchant, do you have to pay anything for driving them over to your place?

Mr. RYNDER. A charge is paid, although not by us. The Stock Yards Company has what is called yardage charges which are collected from the commission merchant rather than the purchaser.

It is our position that the Cleveland Union Stock Yards Company, as well as our company, took the position for some years that we were entitled to egress from the stockyards without extra charge above the railroad rate, based on the old Government stockyards case. You decided against us in 1943. Up to that period it did not matter to us, from the standpoint of paying any fee, whether the car came over to our private sidetrack or unloaded into the stockyards and then we would drive it over. It made no difference to us up to that time, and the business was divided, dependent on the matter of convenience.

Commr. PATTERSON. You would accept them at that time at either place?

Mr. RYNDER. Yes, sir.

Chairman ROGERS. Mr. Pierce.

Argument by Robert R. Pierce

Mr. PIERCE. If the Commissioners please:

897 I should like to attempt to clear up several points here which some of the Commissioners have manifested some interest in.

Commissioner Patterson manifested interest as to when Swift started to have cars switched over this 1,619 feet of track, over to the one unloading door. They have one unloading door here [indicating] for unloading livestock, and they can only spot one car at a time. They did not start that, Mr. Commissioner, until 1930, along around 1930 and '31.

In 1916 Swift and Company had purchased 6½ percent stock ownership in the Cleveland Union Stock Yards. In 1924 the District Court ordered them to divert themselves of that owner-

ship. From that time the happy family over at the Cleveland yards was not quite so happy as it had been theretofore.

In 1930 Swift apparently did not want to take its stock through the stockyards loading and unloading pens, and they wanted their stock placed over here [indicating] at this one unloading door. There is only one door there, and the pens in Swift's plant are way over here [indicating]. So, the stock is unloaded from the red track.

The green track on the east side of Sixty-first Street is their power plant and other operations.

Their packing plant and the few pens they have there serve mainly for stock brought in by truck and are located right over here [indicating], next to West Sixty-fifth Street.

Swift and Company uses those pens almost entirely for
897 truck deliveries of livestock. They have their stock unloaded over in the stockyards because they want it stored there and kept until they are ready to slaughter. Then they drive it across the street to their stockyards. That has been their practice for years.

Commr. PATTERSON. Was that the practice with respect to direct shipments as well as with respect to stock they buy on the market?

Mr. PRINCE. Yes; that is right.

Since beginning 1930, I believe in a period of 2½ years they reconsigned or redirected about 1,131 cars, which were taken over here instead of through the stockyards. It got to be such a volume, the Stock Yards saw they were losing revenue over it, so they said to the railroad, "Well, we own this track, and you just do not handle any more livestock over there, it is competitive business, it is taking revenue away from us."

That is the way in which it is competitive, Mr. Commissioner.

Commr. ALLDREDGE. In that it takes revenue away from the stockyards because it does not handle the stock through the unloading pens.

May I ask whether you concede that section 19—a violation thereunder—has been duly tendered as an issue here in this proceeding?

899 Mr. PRINCE. I do not believe it is, Mr. Commissioner.

As I recall, we were before the Commission here on January 4, 1943, and I know you had the impression at that time that, from the argument being presented by Mr. Ryder, section 19 was involved. But I do not believe it is here in the case.

The service here is rendered by the New York Central to the extent the Stock Yards will permit them to render it over that track. We are the innocent victims here, I might say.

Commr. PORTER. Is it your position that because paragraph (9)

of 1 was not alleged in the complaint, that when it comes to the decision we cannot consider that section?

Mr. PIERCE. No; it is in the picture if you want to consider it.

Commr. PORTER. That is what I mean.

Mr. PIERCE. Yes; absolutely.

But so far as facts concerned here, I do not see where it is in the picture.

Commr. PORTER. I assume, of course, if the facts brought out on the record are such, then, of course, we are at perfect liberty to consider any section of the Act.

Mr. PIERCE. Absolutely, yes; whether it is alleged or not.

Commr. SEAWELL. You have a track, as I understand it, along Swift's plant, with which they have connected with the spur
900 at the plant. If you get the cars over to your own track adjacent to the Swift plant, then it would be your duty to spot them on their sidetrack, as they require?

Mr. PIERCE. Yes; that is true.

Now, if I may explain along that line—and the record shows this very conclusively—back in 1905 Swift and Company bought the Peoples Packing Company which was located along West Sixty-third Street. It is here [indicating]. Now, they had no track connection. They tried to figure out a track connection across West Sixty-fifth Street and they ran into the situation that this was Stock Yards Company property and Stock Yards Company track.

In 1908 Swift and Company procured an ordinance from the City of Cleveland granting a permit for the Big Four to build a connection direct with the Big Four main track up here and to come down West Sixty-third Street to its plant and thereby avoid the stockyards.

Well, after that ordinance was granted, the Lake Erie Provision Company, located right in here, got out an injunction and said they did not want Swift and Company to do that.

Chairman ROGERS. You have a gap up there, Mr. Pierce?

Mr. PIERCE. About 300 feet; 350 feet.

Well; after Lake Erie Provision got that injunction—that was a temporary injunction and that was later removed. Swift and Company got the New York Central Railroad, or the Big Four
901 at that time to go in and condemn the land of the Lake Erie Provision Company. When they got that land condemned, then there was this situation existing: They could go ahead and put the connection in; Swift and Company could put in a connection, but it was going to cost $24,500 to buy the land that was necessary to build the track up to the right-of-way of the Big Four Railroad. Well, Swift had an arrangement whereby one of the packers down there [indicating] was going to

put up $2,000, another packer $2,000, and they had $5,000 raised to put that connection in, but Swift and Company did not want to put up the balance.

Commr. Lee. What year was that?

Mr. Pierce. Following that, in 1910, Swift's manager wrote to the New York Central traffic manager and said, "It looks like we are not making any progress in getting the track connection for our plant. We think the best thing to do is to get a track across West Sixty-fifth Street, connecting, of course, with this extension of the stockyards track." The Big Four said, "All right, if you will get a permit to use West Sixty-fifth Street and if you will provide the right of way over there, we will build a track, we will extend the stockyards track down here and put a connection in and go over to your plant."

I should say it is over here [indicating] that I am referring to.

That was done. Swift and Company procured an ordi-
901½ nance in 1910 granting a permit to the Big Four Railroad to build this track across West Sixty-fifth Street.

Swift and Company negotiated for a lease from the Stock Yards Company for a little parcel of land east of West Sixty-fifth Street as a right-of-way for their track. Their agent, Mr. Thom, admitted in the record, as their authorized agent, that he tried to get the right-of-way along here [indicating] to build that track for Swift and Company, with full knowledge of the fact we could only use the so-called bridge track on the property of the Stock Yards Company and owned by them and controlled by them.

That is the reason I said that Swift and Company had no right to pose as an innocent shipper wronged by the railroad company. The New York Central is holding the bag between these two contestants.

Commr. Patterson. All those industries south of Sixty-fifth Street developed subsequent to 1910?

Mr. Pierce. Some of them were there about that time, Mr. Patterson. It is not known exactly when some of them did go in.

Commr. Patterson. I am talking about those south of Sixty-fifth Street.

Mr. Pierce. Up here [indicating]?

Commr. Patterson. All those industries along beyond Swift, how were those industries served at that time?

902 Mr. Pierce. They were not served until this track was in there. Some of them were there. Swift and Company bought Reed and several other companies along in there [indicating].

Now, none of those other companies are complaining about

any discrimination or undue prejudice here. They have all understood—and the record shows very clearly—in all these sidetrack agreements there is a termination clause in them the same as there is in the Swift and Company agreement. The Railroad Company said to Swift and Company, "We may have to discontinue service any time to you on this track." There is a 10-day terminating clause in it.

Chairman Rogers. What is the present situation as to that gap of 300 feet? Is it still open?

Mr. Pierce. I think probably the political situation is such they could get it through now.

Chairman Rogers. I did not say "political," I said "present situation." Is there any construction up there or is it still open?

Mr. Pierce. I think it is just about like it was, Mr. Commissioner. There is a move that I happen to know, that is not on the record, where one industry wants to vacate Sixty-third Street north of Stock Avenue because it wants to build a platform. I do not know whether Swift and Company knows about that or not, but that is something which has developed.

903 Chairman Rogers. Would that $24,000 figure be right now?

Mr. Pierce. I do not think it should be any worse.

It seems to me that Swift and Company made its election back in 1910 when it knew all about the conditions of this track, when it tried to get this connection and did not want to spend the money, and when it induced the New York Central to build its track over here [indicating] it knew all about those uncertainties and it made its election at that time to take its chances. It does not make any difference to the New York Central whether this stock is placed at the stockyards unloading pens or whether it is placed over at Swift and Company's plant. We stand ready to deliver it either place. But, because of the barrier placed on this by the Stock Yards, the owner of the track, we are just not able to deliver the stock over there.

Now, Swift and Company has certainly been thoroughly familiar all along as to this situation. They were an owner of stock in the Stock Yards Company from 1916 until 1936. Their Cleveland manager was a director on the board of directors of the Cleveland Union Stock Yards all during that 20 years. The Cleveland manager was a member of the executive committee of the board of directors of the Cleveland Union Stock Yards when they had an executive committee in operation, and their traffic manager was a member of the traffic committee of the Stock

904 Yards. The traffic manager of the Cleveland Provision Company and the traffic manager of Swift and Company were on the traffic committee which was charged with the duty of

expediting traffic in and out the stockyards and handling matters of traffic or transportation. Their man was in the picture all the time and they certainly had known all about this.

Commr. SPLAWN. As to the question of compensation, you do pay for the use of the 1,619 feet, do you not, the use you make of it?

Mr. PIERCE. The Big Four maintains the track for the use of it, for the limited use, I should say, to be very technical. They pay the cost of maintenance.

Comr. SPLAWN. Doesn't it come down to something like this? You as a common carrier entered into a contract with an industry for a partial use of its industrial track, and you hold yourself out as a common carrier to handle all shipments. Now, you say this was all aboveboard and everybody knew about it. But isn't the question we have to examine here, whether or not the Stock Yards Company, by entering into a contract with you, has really made a contract by which you have to haul anything that is tendered?

Mr. PIERCE. I do not think so, Mr. Commissioner, on that point. Now, for instance, we hold ourselves ready, willing, and able to perform this service for them, but the Stock Yards will not,
905 or rather Swift and Company will not obtain consent from the Stock Yards Company to use that track. They say to the Railroad Company, "Well, you go over and make a deal with the Stock Yards. That is your expense, that is included in your line-haul charge. We want you to bring this stock over and place it at our plant because that charge is contemplated as being within your line-haul charge."

The Stock Yards, as I understand it, will extend the use of that track if Swift and Company wants to pay for any livestock shipments shipped over there. That is in the record.

Mr. Baker testified, if they wanted to pay for shipments of livestock to go over that track, they can still have the free use of it.

Commr. PATTERSON. Mr. Pierce, do you think you could lease a car, for instance, for the use of one shipper and refuse to lease a car under similar circumstances for the use of another shipper?

Mr. PIERCE. No; not under similar circumstances.

Commr. PATTERSON. What I have in mind is this. You own very few tank cars. If a shipper wants a tank car, you lease a tank car and furnish it to that shipper. Do you think you could refuse to furnish a tank car to another shipper under like conditions?

Mr. PIERCE. Not if a tank car is available from the tank car company. I do not think you could compel the railroad company to equip itself with a tank car in order to supply
906 that shipper.

Commr. PATTERSON. They do not have tank cars, of

course. But assuming there were plenty of tank cars, do you think you would be required to release a tank car for the use of the shipper if he tendered a shipment of that kind?

Mr. PIERCE. I think that has been in controversy, and as I recall, the Commission held in that case you could not compel them, you could not compel the carrier, to procure that tank car. I am relying on what the Commission said in that case.

Commr. ALLDREDGE. This contract you have with the Stock Yards applies to that 1,619 feet of track marked in yellow there?

Mr. PIERCE. Does it apply to that?

Commr. ALLDREDGE. Yes.

Mr. PIERCE. Yes, sir.

Commr. ALLDREDGE. You use that under contract do you?

Mr. PIERCE. We use that under a contract which includes all of the tracks into the stockyards, all of the tracks which are on stockyards property. This track down here [indicating] is on stockyards property.

Commr. ALLDREDGE. All of that is under one contract?

Mr. PIERCE. That is right; all of the tracks.

Commr. ALLDREDGE. With the stockyards?

Mr. PIERCE. Yes.

907 Commr. ALLDREDGE. Is that the one that has the 30-day cancellation provision in it?

Mr. PIERCE. The contract with the Stock Yards on all the tracks has a 30-day cancellation clause.

Commr. ALLDREDGE. Is there another separate contract with Swift and Company dealing with that part of the track that serves them?

Mr. PIERCE. This part [indicating] or this part over here [indicating]?

Commr. ALLDREDGE. Is that all under one contract with Swift?

Mr. PIERCE. If I may explain, Mr. Commissioner, the Federal Packing and the Peoples Packing had a contract, and Swift took them over. They assumed those contracts. Then, as I recall, in 1930, when Swift assumed those contracts, they wanted some changes made in some of the tracks east of Sixty-third Street. At that time the whole thing was put into one contract with Swift and Company.

Commr. PATTERSON. Which covers all the tracks to the connection?

Commr. ALLDREDGE. Which extends to all the connections, what you call stockyards track?

Mr. PIERCE. Yes.

Commr. ALLDREDGE. That goes under one contract?

Mr. PIERCE. All this for Swift and Company is under

908 one contract.

Commr. ALLDREDGE. By virtue of the use of that yellow track, the Stock Yards Company requires you, or by virtue of the fact that there is a 30-day cancellation notice and some other provisions in your contract with the Stock Yards Company, similar provisions are incorporated in the Swift and Company contract?

Mr. PIERCE. The termination provisions; that is right.

Commr. ALLDREDGE. How about the competitive clause? Is that also in the Swift contract?

Mr. PIERCE. That is only in the Stock Yards contract. That is only in the contract between the railroad and the Stock Yards Company.

Commr. ALLDREDGE. You could not use that 1,619 feet of track competitively with the Stock Yards, or something to that effect?

Mr. PIERCE. For any competitive traffic, yes, sir; that is only in the agreement between the railroads and the Stock Yards Company—or should I say the railroad and the Stock Yards Company?

But in the agreement, in the individual track agreement with Swift, there is this provision: "In the event the second party (that is Swift and Company) sells or leases its said track extension or that portion of said sidetracks Nos. 1 and 2 located on its
909 land east of the east line of West Sixty-third Street, or sells or leases the premises served by any of said sidetracks or extension, the grantor or lessee shall acquire no interest in the tracks of the first party, or right to service upon any of said tracks or extension until he shall have contracted in writing with the first party for such interest or such service."

Commr. ALLDREDGE. Would you permit me to ask you one further question? I do not want to interfere with your argument.

How many industries all told do you serve by the use of that 1,619 feet of stockyards track?

Mr. PIERCE. I think there are eight altogether, Standard Beef, Kreinberg and Krosny, Koblenzer Brothers, Earl C. Gibbs, Hughes Provision Company, Theuren-Norton Provision Company, and Swift and Company.

Commr. ALLDREDGE. Now, there is a possibility of further industries being served and perhaps an extension of those tracks?

Mr. PIERCE. It is getting a little congested over there now.

Commr. ALLDREDGE. Now, all of them are subject to that provision that you cannot handle any business to and from those industries that is competitive with the Stock Yards?

Mr. PIERCE. Yes, sir.

Commr. ALLDREDGE. The reason I am asking you particu-
910 larly about that is that I am familiar with another situation where that sort of tie-up happened and it was eventually necessary to straighten it out.

Is there any practicable way for the New York Central to free itself from that situation there?

Mr. PIERCE. Only if Swift and Company would bring its track up to the right of way of the New York Central here [indicating] to the end of West Sixty-third Street here [indicating]. If they would do that, as they planned to do and made arrangements to do so in 1906, there is no reason why the connection would not be made.

Commr. ALLDREDGE. You say about eight altogether, and that includes the Stock Yards, doesn't it, which would leave seven industries independent of the Stock Yards served by those tracks; is that right?

Mr. PIERCE. I would say so.

Commr. ALLDREDGE. Couldn't you work out a system to prorate that expense among all them and build that connection?

Mr. PIERCE. Well, I think it would be up to the industries to do that among themselves. Apparently the rest of them are satisfied to use this service, that is, all except Swift.

Commr. ALLDREDGE. I understand your position, but you have got tied up to a contract that limits your functions as a common carrier. Wouldn't that suggestion that the
911 New York Central might take the initiative in that situation, help this matter?

Mr. PIERCE. We cannot see the justification for it. We cannot see where we are tied up in any contract, Mr. Commissioner.

Commr. ALLDREDGE. You would rather continue to take the risk of having complaints against you about discrimination and perhaps the development of further industries down there when you are not fully free to keep the service going?

Mr. PIERCE. We would only give limited service any place where you have to cross a highway or have any other physical condition.

Swift and Company has been threatened all along with reference to service being granted to its plant over here, across West Sixty-fifth Street. The City Council of Cleveland gives you 30 days' permit. They can cancel the permit to cross that grade on 30 days' notice. They have always been threatened with suspension of service over there [indicating] or an interruption of it.

The only way they could do it is if they would be willing to go ahead with their 1908 arrangement, so that they would not be threatened, up at the north end of West Sixty-third Street.

Commr. PATTERSON. Wouldn't they be threatened there, too? Don't they have to cross the street?

912 Mr. PIERCE. They do, but they cross the part not traversed by public vehicles very much.

Commr. PATTERSON. It has the same threat?

Mr. PIERCE. They might even get that street vacated, Mr. Commissioner, as the other property owner is doing now, as I understand it. If they got it vacated, they would be set all right.

Now, in these contracts too, Mr. Commissioner, with Swift and Company, it says, "The railroad shall have the right to cease, forthwith and without notice, all operations upon said track, if compelled so to do by the owners, other than the respective parties hereto, of any portion of said track, or of the land upon which said track, or any portion thereof, may be laid."

Swift and Company has known about that all the time.

Exhibit 61 is a letter in 1919 from Mr. H. L. Gallen, of Swift and Company, addressed to E. M. Castin, Federal manager of the Big Four at that time. In discussing the track arrangement then, they said they wanted some changes made. Here is Swift and Company's comment:

"We write this without any thought of criticism on the part of the carriers, as the switching lay-out was originally forced upon the carriers and the shippers served by the present tracks, and, therefore, neither the shippers nor the carriers are at fault.
913 but it is our position that wherever the situation can be improved, appropriate action should be taken in the premises."

Now, the New York Central has introduced into the record all of its known and available records. Swift and Company just comes in on a theory, that is all they are in here on. They are not talking to you about any evidence that they put into the picture at all.

When the complaint was in here before, there was not any information, that is, hardly any, for the Commission to look at. At the suggestion of several Commissioners it was ordered set for rehearing.

Commr. ALLDREDGE. Isn't that development taking place down there on a somewhat precarious foundation insofar as transportation is concerned?

Mr. PIERCE. Well, we did pretty much as the Stock Yards and Swift and Company wanted us to do there; yes. They were in bed together from 1916 to 1936, and whatever they wanted over at the stockyards, we did pretty much what they wanted over there.

Commr. ALLDREDGE. But other industries are tacking onto those tracks, and all of them are tied up with that provision. A private industry can stop the whole thing on 30 days' notice and you cannot handle any business to them from any of those industries. It is a situation where one is in a very strategic spot.

914 Mr. PIERCE. I should like to call attention to this, that there doesn't seem to be any tendency on the part of the

Stock Yards to restrict the use of that track to anything except livestock, and there is no complaint from anyone except Swift and Company, and Swift and Company accepted the construction of this restricted use of this track in 1938, when the railroad company notified Swift that the Stock Yards said we could not move any shipments that were competitive over that. We notified them that we would like to have them consent to a change in the sidetrack agreement so that we would be in a position where they would not expect certain deliveries. Swift and Company came back and said, "We are not going to quarrel with you about it. We think in case of a strike or riot that you ought to agree to deliver the cars over to our plant."

The railroad said in reply to Swift, "We cannot very well do that unless the Stock Yards consent to it." That was in 1938. Nothing was done by Swift and Company, although they recognized it then.

In 1941 Swift and Company wrote a formal letter so as to get this complaint before the Commission, and made demand that the stock be delivered to their plant. The railroad notified them, the exhibits are in here, 4 and 5, the railroad notified them that it was impossible, that there was this barrier, that the Stock
915 Yards Company owns the property, and that "You are in a better position to deal with the Stock Yards than the Railroad Company is." So that Swift and Company had its opportunity, and, I say, still has its opportunity, but it wants to impose this obligation upon the New York Central Railroad. It wants to impose the obligation of going over to the Stock Yards and saying, "Well, now, here Swift and Company wants to handle their business over your track, which is competitive with your interests, and you arrange for it."

They had asked us to arrange for it.

Swift and Company did not want to pay, in 1908, to get their connection in. Swift and Company does not want to pay in 1945, and that seems to be the thing that has brought us here.

Do I have any more time?

Chairman Rogers. Yes; you have a few more minutes.

Mr. Prince. I want to say we have recognized all along that the industry must bring its track to the trunk line.

We think that the Commission held that in I. C. C. No. 237, that is the Rex Jellico Coal Company case, 237 I. C. C. 67; and in the Certain-Teed Products case, where there was a claim made there similar to the claim made here. In that case the complainant contended that it was the duty of the Rock Island to furnish, as a facility used by it in transporting traffic to and from com-
916 plainant's plant under through rates, a spur track which extended for about 2,000 feet from the complainant's plant

and the plants of two other industries adjacent thereto, to the tracks of the Rock Island.

This track was built by the Rock Island for a certain plant, and under the construction contract the Rock Island agreed to pay $1 per car to the owners of the track if it should use the track for the purpose of transporting thereon the traffic of certain industries. The track, as I stated, was owned by another company. The Rock Island provided the motive power and they were assessing a $1 charge without a tariff.

The Commission said that there was no provision for the charge until the tariff was filed; as I recall, it said that was not a tenable complaint, you might say. The complaint was not justified, and they said further that the question that this was a Rock Island facility, which the Rock Island is compelled to provide, is also untenable, and they said further:

"There is no duty on the part of a common carrier subject to the Act to provide tracks off its lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. Paragraph 9 of section 1 makes it the duty of a common carrier under stated circumstances to construct, maintain,
917 and operate upon reasonable terms, switch conections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the sidetrack."

I think that is the point you had in mind, Mr. Commissioner.

It seems to me there has been nothing shown here which would justify the position that the Stock Yards has dedicated anything in connection with this track.

Chairman Rogers. The issue might be presented whether you should be compelled to build that 300 feet up there, even though it is off your right-of-way at the present time. I think the Supreme Court held in two or three cases that we did have the authority to do that in a proper case and with proper evidence.

I realize that may not be presented here.

Mr. Pierce. Well, in a dedication in Ohio, there are three conditions under which that can be done; that is, by donation, by purchase, or by appropriation. Frankly, we feel there has been none of those methods used here.

If the Commission should conclude that, notwithstanding the absolute and indisputable knowledge of Swift at all times of the preservation by the Stock Yards of the ownership and control
of Stock Yards track, 1,619 feet, and the limited use of that
918 track granted to the New York Central, and the principles of law applicable to the facts in this case, that the obliga-

tion rests upon the railroad to compel the Stock Yards to extend the full use of Stock Yards track, 1,619 feet, for the convenience and benefit of Swift, I am of opinion, from my meager knowledge of the law, that the railroad would be forced into expensive litigation, which in the end would not be successful.

It seems to me the Stock Yards Company could eject the railroad from that property at any time. They could suspend service over that track. They could remove the track and they could proceed under ejectment proceedings under the Ohio law.

Commissioner PATTERSON. In ejecting they would eject you from serving the Stock Yards Company too, wouldn't they? In other words, don't you serve the Stock Yards on that track, too?

Mr. PIERCE. Well, that track—there is a track here which connects with the 1,619 feet that goes over to the south and west. Now, that serves the loading pens, the hogloading pens, of the Stock Yards. But if they did not want that in there, they could handle the hog loading over here [indicating] on these tracks which are on their property. They would not be handled by that [indicating].

I do want to say this in closing. The New York Central is still willing to make such deliveries over Swift and
919 Company's plant as the Stock Yards will permit be made over that track, and also to call attention to the fact that if service is required to be reestablished over Swift and Company's plant, they still have only one door over here [indicating], so you would have to spot one car at a time, and where the Railroad Company would be required to keep a locomotive there with a crew and spot every car at the convenience of the shipper.

Now, in the second hearing Swift and Company attempted to broaden its complaint by saying, if it could get this service restored, it would then get some vacant property in there [indicating] and it would put in some portable chutes so that they could handle six cars and maybe eight cars at a time. The facilities are still for one car at a time through one door at the Swift plant.

Chairman ROGERS. Mr. Rynder, you have a few minutes.

Rebuttal argument of R. D. Rynder

Mr. RYNDER. I think you would hardly expect a practical person to do unnecessary things. I think Mr. Pierce's summary of the testimony is not quite right. We have ten pens at the present time. We can unload now six cars by merely putting a portable chute beside them, and that is done throughout the United States everywhere.

Now, my friend Mr. Farmer has said he might as well close his doors if this would happen. Well, I am not inviting
920 him to close his doors, but it must be very obvious that a practical man, in the operation of a business, does not submit to what he considers an injustice if there is a way of getting around it.

The Commission held—and a divided Supreme Court sustained them—that we were not entitled to egress without payment of extra charges at the Chicago Stock Yards. We have not shipped a car through the Chicago Stock Yards since that time, and that business has been lost largely to the railway as well as to the stockyards. All we had to do was provide an unloading place adjacent to the yards, and our own unloading pens there located, and move the stock a short distance by truck.

Now we have our own unloading pens here. During this war period it has not been possible to obtain truck transportation for the entire amount that we have. But we have an idea that probably in the reconversion period trucks would be one of the first things that would be on the road, and if we are subjected to what we consider an unlawful and improper fee for getting livestock that we have bought in the country or, let us say, at Indianapolis or Chicago, to a plant sidetrack here [indicating], we are certainly not going to ship it by rail. That will mean that the Stock Yards will lose its fee, because there is no law requiring a truck to go into a stockyard and unload, nor a railroad for that
921 matter. That will mean that the New York Central would lose the business, and, of course, the Stock Yards would not get its fee for unloading. If that would cause it to close up its business, it is strange that it has not a word to say against the direct deliveries of livestock to the three plants immediately to the north.

Now, you will notice in this correspondence they have talked about, that the Stock Yards said with respect to the railroad—and I think the railroad is the only person whom I have a remedy against here—that they would not let them use this track without proper compensation. There has never been any suggestion to us by the New York Central as to what compensation they ought to have, if any.

Chairman Rogers. Is this thing worth the $24,000 that it would take to build that track up there?

Mr. Ryder. The $24,000 was not to build a track. That was prior to 1910, and it was the price on some private land up here that had to be condemned, a price set in the condemnation proceedings against some private land there. It has nothing to do with the cost of using or maintaining the track.

Commr. Porter. I am wondering, under the Oregon decision of the Supreme Court where they held we could not make a railroad build 180 miles but we could make them build to property they already had undertaken to serve, might you not under that decision compel the New York Central to build that end
922 up there and connect you up?

Mr. Ryndon. I have not thought much about that. But the point I am making is that here is our track connection [indicating]. It is already installed. The green line is the private sidetrack, but the red line with which we are connected is not the Stock Yards' but the New York Central's line used in its general terminal business.

The courts as well as the Commission have held that the delivery, the terminal tracks of a railroad are as much a part of the main line—and certainly the use of a track from 1910 until the present day, mind you, the present day, for everything except livestock, that track has been so used—I contend you do not have to have a formal dedication nor a condemnation; that if a man devotes his property to that public use for a sufficient period of time, the courts have said that he has not had it condemned, not dedicated by a formal action, but he has devoted it to the public use, from which it cannot be withdrawn to the detriment of the public served by it. If I am correct in that contention, I think the Examiner should be reversed.

Finally, if I am incorrect in that connection, of course the Examiner should be sustained.

Commr. Barnard. Do you think that the contention that the statute would permit these people to abandon that operation any time they wanted to, is a correct statement?

923 Mr. Ryndon. It is provided by the statute that they can simply abandon it. If a railroad were to try to abandon a track we thought it had to maintain, our action would be before the proper State authorities, but we have not yet been faced with abandonment of the track in this case.

Commr. Barnard. I do not think that makes much difference. When you make the argument it is a dedication, you have to look at the statute that gives them a perfect right, any time they see fit, to abandon the operation. The two things go together.

Mr. Ryndon. I have been under the impression that you and I have been rather viewing this case from different standpoints.

Commr. Barnard. We seem to be.

Chairman Rogers. The case is submitted and will be taken under advisement.

(Whereupon, at 12:30 p. m., the case was submitted and the Commission adjourned.)

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931 New York, Ontario and Western Railway Company (Raymond L. Gibbardt and Ferdinand J. Sieghardt, Trustees)	81				46	40																	
New York, Susquehanna and Western Railroad Company (Henry K. Norton, Trustee)	B1																						
Northampton and Bath Railroad Company	183					36																	
Norwood & St. Lawrence Railroad Company	67				26																		
Ohio & Morenci Railroad Company, The							1																
Ohio Public Service Company, The	29																						
Owasco River Railway, The							9				9												
Patapsco & Back Rivers Railroad Company	FX1 No. 1			18																			
Pennsylvania and Atlantic Railroad Company (South of Hightstown, N. J., to Pemberton, N. J., Inc.) (The Union Transportation Company, Lessee)	26																						
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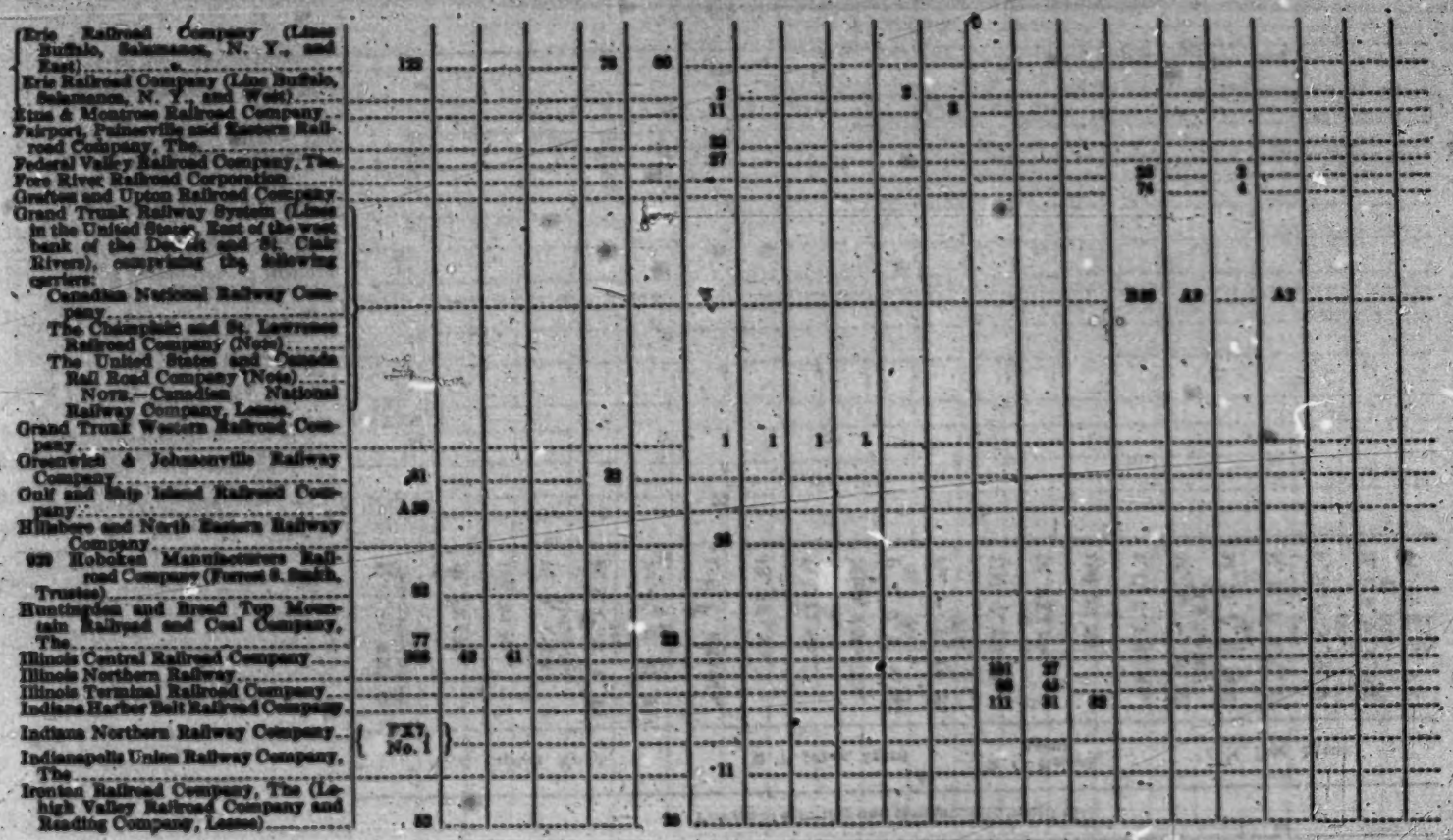
Name of carrier	Powers of attorney and concurrences issued to—																							
	W. S. Curlett, Agent						B. T. Jones, Agent						R. G. Roach, Agent			I. N. Dee, Agent								
	I. C. C. FX1 No. (except as noted)	Ill. FX1 No.	Ind. F1 No.	P. S. C.-Md. F Md. 1 No.	P. S. C.-N. Y. F1 No.	Pa.-P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	Mich. FM-1 No.	P. S. C.-N. Y. F1 No.	Pa. P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	I. C. C. FX1 No.	Maine P. U. C. MEX1 No.	M. D. P. U. MX1 No.	N. H. P. S. C. F1 No.	P. S. C.-N. Y. F1 No.	R. I. P. U. A. FX1 No.	Vt. P. S. C. VX1 No.
Akron & Barberton Belt Railroad Company, The	FX7, No. 1																							
Akron, Canton & Youngstown Railroad Company, The							109																	
Aliquippa and Southern Railroad Company	FX6, No. 1																							
Alton and Southern Railroad	FX7, No. 12					6																		
Alton Railroad Company, The (Henry A. Gardner, Trustee)							39	23																
Ann Arbor Railroad Company, The							116			42														
Arcade and Attica Railroad Corporation	75				36																			
Aroostook Valley Railroad Company																27	10							
Baltimore and Annapolis Railroad Company, The	FX7, No. 6			3																				
Baltimore and Eastern Railroad Company	35			13																				
Baltimore and Ohio Railroad Company, The	189			30	34	35													46					
Baltimore and Ohio Chicago Terminal Railroad Company, The													77	27	26									
Barre and Chelsea Railroad Company																23								1
Bellist & Moosehead Lake Railroad Company																29	13							
Belt Railway Company of Chicago, The																								
Bessemer and Lake Erie Railroad Company							79						66	20										

Boston and Maine Railroad, a

Boston and Maine Railroad 1																34	13	10	3	36		8
Boyne City Railroad Company							6			5												
Buffalo Creek Railroad Company (Erie Railroad Company and Lehigh Valley Railroad Company, Lessees)	FX7, No. 1				1																	
927 Canadian National Railways (Lines West Fort William, Ont., Armstrong, Ont., and East thereof)							E60															
Canadian Pacific Railway Company 1 (Lines West Fort William, Fort William, Ont., and East thereof)																E15						
Canton Railroad Company	FX7, No. 11			13																		
Castleman River Railroad Company, The	FX7, No. 2																					
Central Indiana Railway Company							67		22													
Central Railroad Company of New Jersey, The (Shelton Pitney and Walter P. Gardner, Trustees)	45					35																
Central Vermont Railway, Inc.																31			7			4
Chestnut Ridge Railway Company	77					34																
Chicago and Calumet River Railroad Company	FX7, No. 24																					
Chicago & Illinois Western Railroad	79	46A																				
Chicago & Western Indiana Railroad Company													31	20								
Chicago, Aurora and Elgin Railroad Company (Arthur L. Schwartz, Trustee)							30	73														
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee)													CJ 35	CJ 16								
Chicago North Shore and Milwaukee Railroad Company (John B. Gallagher and Edward J. Quinn, Trustees)							36															
Chicago River and Indiana Railroad Company, The							11	11														
Chicago Short Line Railway Company													73	22								
Chicago, South Shore and South Bend Railroad							35	36	36													
Chicago, West Pullman & Southern Railroad Company													33	30								
Conemaugh & Black Lick Railroad Company	FX8, No. 1					19																
Cornwall Railroad Company	61					40																

1 Will only apply at points on Canadian Pacific Ry. in the States of Maine and Vermont.

Name of carrier	Powers of attorney and concurrences issued to—																							
	W. S. Curlett, Agent						B. T. Jones, Agent						R. G. Rausch, Agent			I. N. Doe, Agent								
	I. C. C. FX1 No. (except as noted)	Ill. FX1 No.	Ind. F1 No.	P. S. C.-Md. F Md. 1 No.	P. S. C.-N. Y. F1 No.	Pa.-P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	Mich. FM-1 No.	P. S. C.-N. Y. F1 No.	Pa. P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	I. C. C. FX1 No.	Maine P. U. C. MEX1 No.	M. D. P. U. MX1 No.	N. H. P. S. C. F1 No.	P. S. C.-N. Y. F1 No.	R. I. P. U. A. FX1 No.	Vt. P. S. C. VX1 No.
Cumberland and Pennsylvania Railroad Company	63			31																				
Curtis Bay Railroad Company	FX3, No. 1			1																				
Cuyahoga Valley Railway Company, The							20																	
928 Delaware and Hudson Railroad Corporation, The	20				19	17																		
Delaware, Lackawanna and Western Railroad Company, The	77				46	40																		
Delray Connecting Railroad Company	FX7, No. 1																							
Detroit and Mackinac Railway Company							63			18														
Detroit and Toledo Shore Line Railroad Company, The							26			20														
Detroit and Western Railroad Co							5			1														
Detroit Terminal Railroad Company	FX7, No. 1																							
Detroit, Toledo and Ironton Railroad Company							28			14		3												
Donora Southern Railroad Company							5																	
East Broad Top Railroad and Coal Company	29					24																		
East Jersey Railroad and Terminal Company	111																							
East Washington Railway Company	15			7																				
Elgin, Joliet and Eastern Railway Company													119	39	37									


Erie Railroad Company (Lines Buffalo, Salamanca, N. Y., and East)
Erie Railroad Company (Lines Buffalo, Salamanca, N. Y., and West)
Etna & Montrose Railroad Company
Fairport, Painesville and Eastern Railroad Company, The
Federal Valley Railroad Company, The
Fore River Railroad Corporation
Grafton and Upton Railroad Company
Grand Trunk Railway System (Lines in the United States, East of the west bank of the Detroit and St. Clair Rivers), comprising the following carriers:
Canadian National Railway Company
The Champlain and St. Lawrence Railroad Company (Note)
The United States and Canada Rail Road Company (Note)
NOTE.—Canadian National Railway Company, Lessee.
Grand Trunk Western Railroad Company
Greenwich & Johnsonville Railway Company
Gulf and Ship Island Railroad Company
Hillsboro and North Eastern Railway Company
920 Hoboken Manufacturers Railroad Company (Forrest S. Smith, Trustee)
Huntingdon and Broad Top Mountain Railroad and Coal Company, The
Illinois Central Railroad Company
Illinois Northern Railway
Illinois Terminal Railroad Company
Indiana Harbor Belt Railroad Company
Indiana Northern Railway Company
Indianapolis Union Railway Company, The
Ironton Railroad Company, The (Lehigh Valley Railroad Company and Reading Company, Lessee)
FXY, No. 1

Name of carrier	Powers of attorney and concurrences issued to— W. S. Curlett, Agent: I. C. C. FX1 No. (except as noted)	W. S. Curlett, Agent: Ill. FX1 No.	W. S. Curlett, Agent: Ind. F1 No.	W. S. Curlett, Agent: P. S. C. Md. F Md. 1 No.	W. S. Curlett, Agent: P. S. C. N. Y. F1 No.	W. S. Curlett, Agent: Pa. P. U. C. F1 No.	B. T. Jones, Agent: I. C. C. FX1 No.	B. T. Jones, Agent: Ill. FX1 No.	B. T. Jones, Agent: Ind. F1 No.	B. T. Jones, Agent: Mich. FM-1 No.	B. T. Jones, Agent: P. S. C. N. Y. F1 No.	B. T. Jones, Agent: Pa. P. U. C. F1 No.	R. G. Raasch, Agent: I. C. C. FX1 No.	R. G. Raasch, Agent: Ill. FX1 No.	R. G. Raasch, Agent: Ind. F1 No.	I. N. Doe, Agent: I. C. C. FX1 No.	I. N. Doe, Agent: Maine P. U. C. MEX1 No.	I. N. Doe, Agent: M. D. P. U. MX1 No.	I. N. Doe, Agent: N. H. P. S. C. F1 No.	I. N. Doe, Agent: P. S. C. N. Y. F1 No.	I. N. Doe, Agent: R. I. P. U. A. FX1 No.	I. N. Doe, Agent: Vt. P. S. C. VX1 No.
Jamestown, Westfield and Northwestern Railroad Company							33															
Johnstown and Stony Creek Rail Road Company							5					8										
Lackawanna and Wyoming Valley Railroad Company	86					26																
Lake Erie and Eastern Railroad Company, The	FX3, No. 3																					
Lake Erie and Fort Wayne Railroad Co.							6		4													
Lake Erie, Franklin & Clarion Railroad Company	64					28																
Lakeside and Marblehead Railroad Company, The							51															
Lake Terminal Railroad Co., The							7															
La Salle and Bureau County Railroad Company, The							48	10														
Lehigh and Hudson River Railway Company, The	74				42																	
Lehigh and New England Railroad Company	58				41	34																
Lehigh Valley Railroad Company	75				43	37																
Ligonier Valley Railroad Company	30					13																
Long Island Rail Road Company, The	65				35																	
Lorain & West Virginia Railway Company, The							50															
Louisville & Jeffersonville Bridge and Railroad Company							11		1													
Maine Central Railroad Company																C07	14		9			

Manistee and Northeastern Railway Company							26			5											
Manistique and Lake Superior Railroad Company							65			10											
Manufacturers' Junction Railway Company													20	17							
800 Marcellus and Otisco Company, Inc., The	15				8																
Maryland and Pennsylvania Railroad Company	77			37		34															
Massena Terminal Railroad Company, The	{ FX7, No. 1 }																				
McKeesport Connecting Railroad Co.							7					9									
Middle Creek Railroad Company	{ FX7, No. 1 }																				
Middletown and Unionville Railroad Company (Louis F. Zierer, Trustee)	101				43																
Mississippi Central Railroad Company	89																				
Monongahela Connecting Railroad Company, The	{ FX8, No. 1 }					6															
Monongahela Railway Company, The	65					27															
Morristown & Erie Railroad Company	79																				
Moshannon Valley Railroad Company																75					13
Mount Hope Mineral Railroad Company	39																				
Muskegon Railway and Navigation Company	{ FX7, No. 1 }																				
Narragansett Pier Railroad Company, The																30					16
Newburgh and South Shore Railway Company, The							19														
New Haven & Dunbar Railroad Company	{ FX7, No. 1 }				3																
New Jersey and New York Railroad Company, The (Peter Duryea, Trustee)	N44				N26																
New Jersey, Indiana & Illinois Railroad Company							63		22												
New York and Long Branch Railroad Company, The	84																				
New York Central Railroad Company, The							4	3	3	3	3	3						3			
Boston and Albany District.																					
Chicago, Kalamazoo & Saginaw District.																					
Cleveland, Cincinnati, Chicago & St. Louis District.																					
Eastern District.																					
Michigan Central District.																					
Western District.																					
West Shore District.																					

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Pennsylvania-Reading Seashore Lines	26																											
Peoria and Pekin Union Railway Company									35	14																		
Pere Marquette Railway Company									101		24	20																
Philadelphia, Bethlehem and New England Railroad Company	FX3, No. 1						23																					
Pittsburgh, Allegheny & McKees Rocks Railroad Company									9					10														
Pittsburg & Shawmut Railroad Company, The	87						30																					
Pittsburgh and Lake Erie Railroad Company, The	99						36																					
Pittsburgh and Ohio Valley Railway Company	FX7, No. 2						6																					
Pittsburgh & West Virginia Railway Company, The	61						31																					
Pittsburgh, Chartiers & Youghiogheny Railway Company	97						40																					
Pittsburg, Shawmut & Northern Railroad Company, The (John D. Dickson, Receiver)	106				63		24																					
Portland Terminal Company																					28	14						
Pullman Railroad Company	FX7, No. 6																											
Rahway Valley Company (Rahway Valley Company, Lessee)	29																											
Raritan River Rail Road Company	96																											
Reading Company	42						26																					
982 River Terminal Railway Company, The	14																											
Roslyn Connecting Railroad Company	18																											
Rutland Railroad Company (William E. Navin and Wallace M. Fay, Trustees)																					A1				A2		A3	
St. Johnsbury & Lake Champlain Railroad Company, The (John E. Willis, Trustee)																					1						1	
St. Louis & Belleville Electric Railway Company																												
St. Louis and Ohio River Railroad	43																		28	14								
South Buffalo Railway Company	FX3, No. 3				17																							
Springfield Suburban Railroad Company, The	FX7, No. 1																											
Springfield Terminal Railway Company																					19						2	
Staten Island Rapid Transit Railway Company, The	61				28																							

Name of carrier	Powers of attorney and concurrences issued to—																					
	W. S. Curlett, Agent						D. T. Jones, Agent						R. O. Rasch, Agent			I. N. Doe, Agent						
	I. C. C. FX1 No. (except as noted)	Ill. FX1 No.	Ind. F1 No.	P. S. C.-Md. F Md. 1 No.	P. S. C.-N. Y. F1 No.	Pa.-P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	Mich. FM-1 No.	P. S. C.-N. Y. F1 No.	Pa. P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	I. C. C. FX1 No.	Maine P. U. C. MEX1 No.	M. D. P. U. MX1 No.	N. H. P. S. C. F1 No.	P. S. C.-N. Y. F1 No.	R. I. P. U. A. FX1 No.	Vt. P. S. C. VX1 No.
Steelton & Highspire Railroad Company	FX8, No. 1					20																
Suncook Valley Railroad																16			2			
Toledo, Angola & Western Railway, The	FX7, No. 1																					
Toledo, Peoria & Western Railroad (Holly Stover, Federal Manager)							62	26														
Toledo Terminal Railroad Company, The							40															
Toronto, Hamilton and Buffalo Railway Company, The							FX6, No. [illegible]															
Trenton-Princeton Traction Company	22																					
Union Freight Railroad Company (Boston, Mass.)																20		9				
Union Railroad Company																						
Unity Railways Company	34						40					5										
Upper Merion and Plymouth Railroad Company	FX7, No. 1					1																
Wabash Railroad Company							265	62	47	30	30											
Washington and Old Dominion Railroad	92																					
Waynesburg & Washington Railroad							33					12										
Western Maryland Railway Company	90			28		73																
Wharton and Northern Railroad Company	45																					
Wheeling and Lake Erie Railway Company, The							40															

Winfield Railroad Company, The							26					17										
Wyandotte Southern Railroad Company							6			7												
Wyandotte Terminal Railroad Company							A7			A6												
Yazoo and Mississippi Valley Railroad Company	161																					
York Utilities Company																15	6					
Youngstown & Northern Railroad Company, The							7															

§ Will only apply at points on Wabash R. R. in the States of Illinois, Indiana, Michigan, New York, and Ohio.

RULE I.—Except as otherwise provided in Rule III and except as otherwise
934 provided in other tariffs, cars of freight moving at carload rates including switching rates and cars of less carload or any quantity freight subject to rules governing the handling of ferry or trap cars as published in tariffs lawfully on file with the Interstate Commerce Commission and State Commissions, will be delivered on and removed from privately owned side tracks or industrial tracks near and connecting with the carrier's tracks without any additional charge, provided there are no conditions which make it unsafe for the carrier's locomotives to operate over such tracks, or that prevent the carrier from receiving or delivering cars at its ordinary operating convenience. (See Note 2.)

RULE II.—Except as otherwise provided in Rule III, cars covered by Rule I will be received and delivered at loading and unloading locations on tracks designated by the industry within the industrial plant site without any additional charge when that service can be ordinarily performed in continuous movement at the carrier's ordinary operating convenience, within the meaning of those terms as defined in Notes 1 and 2, provided the locomotives in general use for switching in the vicinity of the plant site can safely operate over the tracks within the plant site.

RULE III.—When receipt or delivery of a car or cars as provided in Rules I and II cannot be accomplished in continuous movement at the carrier's ordinary operating convenience because of interruption, interference or any other condition caused by the shipper or consignee, the carrier will arrange for receipt or delivery under the following provisions:

(a) If it appears that the delay will be of a temporary nature the locomotive will be held at the nearest available location and the service completed when conditions permit. For delay to the locomotive when so held, a charge of $1.60 for each five minutes or fraction thereof in excess of 30 minutes will be assessed, which charge will be in addition to the published rate or rates.

Charges will be assessed in accordance with the last preceding paragraph when delays encountered during a locomotive trick or shift aggregate more than 30 minutes.

(b) If, after a reasonable period of delay, the obstruction or condition preventing completion of service has not been removed or eliminated the carrier may, at its option, withdraw its locomotive and place the car or cars on a hold or other available tracks within, or without, the industry plant site. Charges for the delay encountered shall be computed in accordance with paragraph (a). Subsequent movement by carrier locomotive of the car or cars from the hold or other track or tracks to actual point of delivery will be subject to a charge of $8.47 per car.

(c) For the purpose of applying the provisions of paragraphs (a) and (b) time shall commence to run from the minute the conductor determines that the shipper or consignee is unable to accept service.

DEFINITION OF TERMS USED HEREIN

NOTE 1.—"Continuous movement" means a movement between the carrier's tracks and the loading or unloading locations, a hold track or tracks, or other place where cars are received or delivered without any delay or any suspension or break in time, or continuity of the movement, due to any circumstances or condition for which the industry is directly responsible.

NOTE 2.—"Ordinary operating convenience" means the time selected by the carrier when it is most advantageous to the carrier, in relation to its coordinated and harmonious switching activities in a particular switching zone, when the terminal services are performed by switching locomotives, or at the time the train arrives at the plant site when the terminal services are performed by road-haul locomotives. Ordinarily it contemplates only one switch a day except when additional switches are made by the carrier in its own or the public interest, as distinguished from the industry's interest, to assure the prompt release of equipment or facilities, or when necessitated by the volume of traffic. Movements to, from or within the plant site at other times at the request of the industry or to meet the requirements of industrial operations are not at the carrier's ordinary operating convenience.

Issuing agents	I. C. C. No.	Tariff No.	State Commission numbers
W. S. Curlett	A-622	134-A	Ill. C. C. A-2, Ind. R. C. A-2, P. S. C.-Md. A-32, P. U. C.-N. J. A-29, P. S. C.-N. Y. A-166, Pa. P. U. C. A-122, Vt. P. S. C. A-28, Va. C. C. A-62, P. S. C.-W. Va. A-42, Conn. P. U. C. 12, Maine P. U. C. 47, M. D. P. U. 32, N. H. P. S. C. 40, P. S. C.-N. Y. 61, R. I. P. U. A. 36, Vt. P. S. C. 41.
I. N. Doe	623	53-A	
B. T. Jones	4002	622	Ill. C. C. 342, Ind. R. C. D-720, K. R. C. 96, Mich. P. S. C. 624, P. S. C.-N. Y. 272, Ohio 2130, Pa. P. U. C. 338, P. S. C.-W. Va. 391.
R. G. Raasch	620	.....	Ill. C. C. 309, Ind. R. C. 134, P. S. C. Mo. 69.

W. S. Curlett, I. N. Doe, B. T. Jones, and R. G. Raasch, Agents

Local Freight Tariff of Rules Governing Receipt and Delivery of Cars of Freight (Except Coal at Mines, Breakers, and Washeries; Iron Ore at Mines; Beehive Coke at Ovens; and Traffic at the Dock Where Such Traffic is Interchanged With Water Carriers) on, to and/or From Private Tracks and Industrial Tracks Served by Carriers Shown on Pages 2 to 9 of Tariff

Issued October 22, 1945. Effective November 1, 1945 (except as noted).

Authority to publish on one (1) day's notice granted by permission of the Interstate Commerce Commission No. 26705 of October 19, 1945, and under authority of:

Connecticut Public Utilities Commission, Authority SN-632 of October 22, 1945.

Illinois Commerce Commission Special Permission No. R-13044 of October 23, 1945.

Public Service Commission of Indiana, Special Permission No. TB-4724 of October 22, 1945.

Kentucky Railroad Commission, Short Notice No. 727 of October 22, 1945.

Maine Public Utilities Commission Special Permission R. R. No. 2822 of October 22, 1945.

Public Service Commission of Maryland, Order No. 41489 of October 18, 1945.

Massachusetts Department of Public Utilities Special Permission No. 7008-TM of October 22, 1945.

Michigan Public Service Commission, Special Permission No. 1550, amended of October 22, 1945.

Public Service Commission of Missouri, Authority No. 8373 of October 24, 1945.

New Hampshire Public Service Commission Order No. 4774 of October 24, 1945.

Board of Public Utility Commissioners, State of New Jersey, Permission dated October 18, 1945.

Public Service Commission, State of New York, Special Permission Order No. 14755 of October 22, 1945.

The Public Utilities Commission of Ohio, Special Permission No. 9934 of October 19, 1945, amended.

Effective upon less than statutory notice by Special Permission of the Pennsylvania Public Utility Commission No. 21688 of October 23, 1945.

Rhode Island Public Utilities Administrator Order No. 5634 of October 22, 1945.

Vermont Public Service Commission Special Order No. 404 of October 23, 1945.

Public Service Commission of West Virginia, Informal Order No. 3768 of October 22, 1945.

B. T. Jones, Agent, 608 South Dearborn Street, Chicago 5, Ill.

R. G. Raasch, Agent, 236 Union Station Building, 516 W. Jackson Blvd., Chicago 6, Ill.

I. N. Doe, Agent, Room 524, South Station, Boston 10, Mass.

Issued by W. S. Curlett, Agent, 143 Liberty Street, New York 6, N. Y.

935–A POSTPONEMENT NOTICE

The Effective DATE of Tariffs to which this is a Supplement is hereby postponed from November 1, 1945, until January 1, 1946.

Effective January 1, 1946. Cancel the following from Page 2 of Tariff:

CANCELLATIONS

Issuing agents	I. C. C. No.	Tariff No.	State Commission numbers
W. S. Curlett	A-620	154	Ill. C. C. A-1, Ind. R. C. A-1, P. S. C.-Md. A-62, P. U. C.-N. J. A-26, P. S. C.-N. Y. A-144, Pa. P. U. C. A-120, Vt. P. S. C. A-22, Va. C. C. A-66, P. S. C.-W. Va. A-61.
I. N. Doe	321	32	Conn. P. U. C. 12, Maine P. U. C. 66, M. D. P. U. 32, N. H. P. S. C. 30, P. S. C.-N. Y. 60, R. I. P. U. A. 25, Vt. P. S. C. 42.
B. T. Jones	2937		Ill. C. C. 941, Ind. R. C. D-782, K. R. C. 92, Mich. P. S. C. 883, P. S. C.-N. Y. 271, Ohio 2149, Pa. P. U. C. 317, P. S. C.-W. Va. 360.
R. G. Raasch	894		Ill. C. C. 287, Ind. R. C. 183, P. S. C. Mo. 68.

936 SUPPLEMENT No. 2

Supplements Nos. †1, ¢A, ¢B, §C and 2 contain all changes from the original tariff.

†Postponement Supplement.

¢Virginia Intrastate Supplement.

¢Illinois Intrastate Supplement.

§Connecticut Intrastate Supplement.

To

Issuing agents	I. C. C. No.	Tariff No.	State Commission numbers
W. S. Curlett	A-633	134-A	Ill. C. C. A-2, Ind. R. C. A-2, P. S. C.-Md. A-38, P. U. C. N. J. A-38, P. S. C.-N. Y. A-142, Pa. P. U. C. A-122, Va. P. S. C. A-38, Va. C. C. A-66, P. S. C.-W. Va. A-66, Conn. P. U. C. 12, Maine P. U. C. 47, Mass. D. P. U. 8, N. H. P. S. C. 66, P. S. C.-N. Y. 41, R. I. P. U. A. 38, Vt. P. S. C. 41.
I. N. Doe	522	33-A	
B. T. Jones	4003	622	Ill. C. C. 563, Ind. R. C. D-779, K. R. C. 38, Mich. P. S. C. 664, P. S. C.-N. Y. 373, Ohio 2159, Pa. P. U. C. 33, P. S. C.-W. Va. 293.
R. G. Raasch	600	----------	Ill. C. C. 800, Ind. R. C. 154, P. S. C. Mo. 68.

W. S. Curlett, I. N. Doe, B. T. Jones, and R. G. Raasch, Agents

Local Freight Tariff of Rules Governing Receipt and Delivery of Cars of Freight (Except Coal at Mines, Breakers and Washeries, Iron Ore at Mines, Beehive Coke at Ovens, and Traffic at the Dock Where Such Traffic is Interchanged with Water Carriers) on, to and/or from Private Tracks and Industrial Tracks served by carriers shown on pages 2 to 9 of Tariff and as amended.

Issued January 4, 1946. Effective February 15, 1946.

B. T. Jones, Agent, 608 So. Dearborn St., Chicago 5, Ill.

R. G. Raasch, Agent, 236 Union Station Building, 516 W. Jackson Blvd., Chicago 6, Ill.

Issued by W. S. Curlett, Agent, 143 Liberty St., New York 6, N. Y.

I. N. Doe, Agent, Room 524, South Station, Boston 10, Mass.

926-A

LIST OF CARRIERS

Name of carrier	Powers of attorney and concurrences issued to—																						
	W. S. Curlett, Agent						D. T. Jones, Agent						R. G. Rausch, Agent			L. N. Doe, Agent							
	I. C. C. FX1 No. (Except as Noted)	Ill. FX1 No.	Ind. F1 No.	P. & C.—Md. F. Md. 1 No.	P. & C.—N. Y. F1 No.	Pa.—P. U. C. F1 No.	I. C. C. FX1 No.	Ill. F1 No.	Ind. F1 No.	Mich. FM-1 No.	P. & C.—N. Y. F1 No.	Pa. P. U. C. F1 No.	I. C. C. FX1 No.	Ill. FX1 No.	Ind. F1 No.	I. C. C. FX1 No.	Maine P. U. C. MEX1 No.	M. D. F. MX1 No.	N. H. P. S. C. F1 No.	P. S. C.—N. Y. F1 No.	R. I. P. U. A. FX1 No.	Vt. P. S. C. VX1 No.
Carried from page 3 of Tariff: Chicago North Shore and Milwaukee Railroad Company (John E. Gallagher and Edward J. Quinn, trustees)																							
Add to page 4 of Tariff: Fort Wayne Union Railway Company							6																
Carried from page 4 of Tariff: Mississippi Central Railroad Company																							
Change on page 5 of Tariff: Upper Marion and Pigeonsh Railroad Company	FX7 No. 1					16																	

937

SUPPLEMENT No. 3

(Cancels Supplement No. 2)

Supplements Nos. †1, ♁ A, ⚓ B, §C and 3 contain all changes from the original tariff.

† Postponement Supplements.
♁ Virginia Intrastate Supplement.
⚓ Illinois Intrastate Supplement.
§ Connecticut Intrastate Supplement.

To

Issuing agents	I. C. C. No.	Tariff No.	State Commission numbers
W. S. Curlett	A-622	134-A	Ill. C. C. A-2, Ind. R. C. A-2, P. S. C.-Md. A-52, P. U. C.-N. J. A-28, P. S. C.-N. Y. A-146, Pa. P. U. C. A-138, Vt. P. S. C. A-36, Va. C. C. A-84, P. S. C.-W. Va. A-93
I. N. Doe	832	83-A	Conn. P. U. C. 13, Maine P. U. C. 47, M. D. P. U. 2, N. H. P. S. C. 40, P. S. C.-N. Y. 61, R. I. P. U. A. 35, Vt. P. S. C. 41
B. T. Jones	4002	622	Ill. C. C. 542, Ind. R. C. D-730, K. R. C. 93, Mich. P. S. C. 694, P. S. C.-N. Y. 272, Ohio 2150,-Pa. P. U. C. 318, P. S. C.-W. Va. 291.
R. G. Raasch	600	.....	Ill. C. C. 300, Ind. R. C. 134, P. S. C. Mo. 60.

W. S. Curlett, I. N. Doe, B. T. Jones, and R. G. Raasch, Agents

Local Freight Tariff of Rules Governing Receipt and Delivery of Cars of Freight (Except Coal at Mines, Breakers and Washeries, Iron Ore at Mines, Beehive Coke at Ovens, and Traffic at the Dock Where Such Traffic is Interchanged With Water Carriers) on to and/or From Private Tracks and Industrial Tracks Served by Carriers Shown on Pages 2 to 9 of Tariff and as Amended

Issued April 25, 1946. Effective May 29, 1946 (except as otherwise provided herein).

B. T. Jones, Agent, 608 So. Dearborn St., Chicago 5, Ill.

R. G. Raasch, Agent, 236 Union Station Building, 516 W. Jackson Blvd., Chicago 6, Ill.

Issued by W. S. Curlett, Agent, 143 Liberty St., New York 6, N. Y.

I. N. Doe, Agent, Room 524, South Station, Boston 10, Mass.

Name of carrier	Powers of attorney and concurrences issued to—																							
	W. S. Curlett, Agent						B. T. Jones, Agent						R. O. Baasch, Agent			I. N. Doe, Agent								
	I. C. C. FXI No. (except as noted)	Ill. FXI No.	Ind. FI No.	P. S. C.-Md. F. Md. 1 No.	P. S. C.-N. Y. FI No.	Pa. P. U. C. FI No.	I. C. C. FXI No.	Ill. FI No.	Ind. FI No.	Mich. FM-1 No.	P. S. C.-N. Y. FI No.	Pa. P. U. C. FI No.	I. C. C. FXI No.	Ill. FXI No.	Ind. FI No.	I. C. C. FXI No.	Maine P. U. C. MEXI No.	M. D. P. U. MXI No.	N. H. P. S. C. FI No.	P. S. C.-N. Y. FI No.	R. I. P. U. A. FXI No.	Vt. P. S. C. VXI No.		
Cancel from page 2 of Tariff:																								
Alton and Southern Railroad																								
Cancel from page 3 of Tariff:																								
Canadian National Railways (Lines West Port William, Ont., Armstrong, Ont., and East thereof)																								
[1] Chicago North Shore and Milwaukee Railroad Company (John B. Gallagher and Edward J. Quinn, Trustees)																								
Add to page 4 of Tariff:																								
Flint Belt Railway							3																	
[1] Fort Wayne Union Railway Company							6																	
Cancel from page 6 of Tariff:																								
[1] Mississippi Central Railroad Company																								
Cancel from page 8 of Tariff:																								
St. Louis and Ohio River Railroad																								
Change on page 8 of Tariff:																								
[1] Upper Merion and Plymouth Railroad Company	FXI No. 1						16																	

[1] Released from Supplement No. 2, effective February 15, 1940.

939 SUPPLEMENT No. 4

Supplements Nos. †1, ♯A, ♯ B, § C, § D, 3 and 4 contain all changes from the original tariff.

† Postponement Supplement.

♯ Virginia Intrastate Supplement.

♯ Illinois Intrastate Supplement.

§ Connecticut Intrastate Supplement.

To

Issuing agents	I. C. C. No.	Tariff No.	State Commission numbers
W. S. Curlett	A-622	134-A	Ill. C. C. A-2, Ind. R. C. A-2, P. S. C. Md. A-66, P. U. C. N. J. A-66, P. S. C.-N. Y. 2-166, Pa. P. U. C. A-66, Vt. P. S. C. A-66, Va. C. C. A-66, P. S. C. W. Va. A-66.
I. N. Dee	622	134-A	Conn. P. U. C. 12, Maine P. U. C. 67, Mass. D. P. U. 12, N. H. P. S. C. 66, P. S. C.-N. Y. 66, R. I. P. U. A. 66, Vt. P. S. C. 66.
B. T. Jones	4002	622	Ill. C. C. 342, Ind. R. C. D-726, K. R. C. 66, Mich. P. S. C. 604, P. S. C.-N. Y. 272, Ohio 2180, Pa. P. U. C. 313, P. S. C. W. Va. 201.
R. G. Resch	600		Ill. C. C. 300, Ind. R. C. 134, P. S. C. Md. 66.

SPECIAL SUPPLEMENT INCREASE IN RATES AND CHARGES

Effective July 1, 1948, rates and charges in tariff and in prior supplements thereto are hereby increased as provided in Tariff of Increased Rates and Charges No. X-148:

Issuing agents	I. C. C. No.	State Commission numbers
W. S. Curlett	A-762	P. S. C. Md. A-44, P. U. C.-N. J. A-66, P. S. C.-N. Y. A-122, Pa. P. U. C. A-186, Vt. P. [illegible] A-19, V. C. C. A-66, P. S. C. W. Va. A-73.
I. N. Dee	484	Conn. P. U. C. 2, Maine P. U. C. 26, Mass. D. P. U. 44, New Hampshire P. S. C. 32, P. S. C.-N. Y. 41, R. I. P. U. A. 26, Vt. P. S. C. 32.
B. T. Jones	3020	Ill. C. C. 474, Ind. R. C. D-802, K. R. C. 66, Mich. P. S. C. 662, P. S. C.-N. Y. 226, Ohio P. U. C. 2015, Pa. P. U. C. 266, P. S. C. W. Va. 267.
R. G. Resch	500	Ill. C. C. 266, Ind. R. C. 126, P. S. C. Md. 61.

Supplements to or successive issues thereof.

The provisions of this supplement will NOT apply on intrastate traffic between points in, and transported wholly within, any one of the following-named States: Connecticut, Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, Rhode Island, Vermont, Virginia, West Virginia, until authorized by lettered supplement to Tariff of Increased Rates and Charges referred to above and then only to the extent authorized by such lettered supplement.

If a prior supplement hereto contains rates or charges to become effective upon a date subsequent to the effective date of this supple-

ment such rates and charges will on their effective date, be increased as provided in "Tariff of Increased Rates and Charges" referred to above.

The form of this special supplement is permitted by authority of Interstate Commerce Commission, Permission No. 7620 of March 2, 1942 (as amended).

Issued June 27, 1946. Effective July 1, 1946.

Issued on three days' notice under authority of Order dated June 20, 1946, of the Interstate Commerce Commission, in Ex Parte No. 162 and Ex Parte No. 148.

Issued under authority of:

Maine Public Utility Commission Order No. R. R. 2848 dated June 25, 1946.

Public Service Commission of Maryland, Order No. 42335 of June 25, 1946.

Massachusetts Department of Public Utilities Order No. 7475 dated June 25, 1946.

New Hampshire Public Service Commission Order No. 4931 dated June 25, 1946.

Board of Public Utility Commissioners, State of New Jersey, Permission dated June 25, 1946.

Pennsylvania Public Utility Commission Special Permission No. 21891 dated June 24, 1946.

This supplement is exempt from the terms of Rule 9 (e) of Tariff Circular No. 20 under permission of the Interstate Commerce Commission No. 7620 dated March 2, 1942, as amended.

B. T. Jones, Agent, 608 So. Dearborn St., Chicago 5, Ill.

R. G. Raasch, Agent, 236 Union Station Building, 516 W. Jackson Blvd., Chicago 6, Ill.

Issued by W. S. Curlett, Agent, 143 Liberty St., New York 6, N. Y.

I. N. Doe, Agent, Room 524, South Station, Boston 10, Mass.

940 Special Supplement No. 5 to T. L. T. B. No. ——— I. C. C. No. A833. Special Supplement to I. C. C. Nos., C. T. C. Nos., State Commission Nos. shown herein.

TRUNK LINE TARIFF BUREAU

W. S. Curlett, Agent

Special Supplement to Tariffs Listed Herein Issued by W. S. Curlett, I. N. Doe, R. H. Hoke, B. T. Jones, L. E. Kipp, W. M. Matthews, D. Q. Marsh, R. G. Raasch, Agents, and A. H. Carson, Alternate Agent

Applying in Connection With Participating Carriers Shown in Tariffs and Supplements Thereto Enumerated on Pages 2, 3, and 4 Herein

Rates, Routes, and Other Arrangements From, to, at, or via Central Railroad Company of Pennsylvania

PARTICIPATING CARRIERS

Abbreviation	Carrier	
Add—CRRofPa	Central Railroad Company of Pennsylvania	I. C. C. FX1 No. 4. C. T. C. P. A. No. 4. Pa. P. U. C. 71 No. 4.

ADOPTION NOTICE

The Carrier shown in Column No. 2 below, by its adoption notice shown in Column No. 3 below, having taken over tariffs, etc., of the Carrier shown in Column No. 1 below, insofar as they contain rates, charges, rules, or regulations applying from, to, at, or via the stations shown below, the Carrier shown in Column No. 2 below, is hereby substituted for the Carrier shown in Column No. 1 below, wherever it appears in this tariff, and as amended, in connection with said stations and rates:

Column No. 1 Old Carrier	Column No. 2 Adopting Carrier	Column No. 3 Adoption Notice
Central Railroad Company of New Jersey, The (Stations shown below.)	Central Railroad Company of Pennsylvania	I. C. C. No. A-1.

Station	Index No.	Station	Index No.	Station	Index No.	Station	Index No.
Alden, Pa.	552	Freemansburg, Pa.	376	Mountain Park, Pa.	335	Scranton, Pa.	601
Allentown, Pa.	355	Glen Onoko, Pa.	409	Nanticoke, Pa.	570	Seigfried, Pa.	402
Ashley, Pa.	506	Glen Summit, Pa.	520	Nesquehoning, Pa.	445	Solomon's Gap, Pa.	550
Auchincloss, Pa.	555	Glen Summit Water, Pa.	526	Nesquehoning Jct., Pa.	442	South Wilkes-Barre, Pa.	571
Audenried, Pa.	463	Haucks, Pa.	457	Northampton, Pa.	360	Sugar Notch, Pa.	557
Bergers, Pa.	514	Hauto, Pa.	445	Odenwelder, Pa.	354	Tannery, Pa.	457
Bethlehem, Pa.	379	Hauto Storage Yard, Pa.	446	Packerton Jct., Pa.	436	Taylor, Pa.	596
Bethlehem Jct., Pa.	362	Race St., Pa.	374	Palmerton, Pa.	418	Treichler, Pa.	406
Bowmanstown, Pa.	474	Hokendauqua, Pa.	307	Parryville, Pa.	427	Treskow, Pa.	460
Buttonwood, Pa.	544	Hometown, Pa.	451	Parsons, Pa.	590	Tunnel, Pa.	511
Catasauqua, Pa.	361	Laurel Run, Pa.	533	Penn Haven Jct., Pa.	472	Union Jct., Pa.	592
Coplay Branch Jct., Pa.	354	Lee, Pa.	535	Penobscot, Pa.	530	Upper Lehigh, Pa.	505
Drifton Jct., Pa.	461	Leamine, Pa.	556	Plains Jct., Pa.	590	Upper Lehigh Jct., Pa.	460
East Allentown, Pa.	356	Lehigh Gap, Pa.	415	Pond Creek, Pa.	496	Walnutport, Pa.	412
Easton, Pa.	361	Lehighton, Pa.	422	Pond Creek Jct., Pa.	496	Wanamie, Pa.	565
Easton (Taylor St.), Pa.	370	Leslie Run, Pa.	375	Rita, Pa.	517	Warrior Run, Pa.	560
E & W Jct., Pa.	357	Lindner, Pa.	454	Rockport, Pa.	475	Weissport, Pa.	420
Enterprise Siding, Pa.	550	Lockport, Pa.	438	Sandy Run, Pa.	502	White Haven, Pa.	536
Fifth Avenue (Scranton) Pa.	595	Mauch Chunk, Pa.	439	Sandy Run Jct., Pa.	469	Wilkes-Barre, Pa.	577
Franklin Jct., Pa.	541	Miners Mills, Pa.	553				

ROUTES

Wherever, in tariffs to which this is a supplement, routes are published to, from, or via the above-named points and the Central Railroad Company of New Jersey is shown as origin, intermediate or terminal carrier, the Central Railroad Company of Pennsylvania is hereby substituted for the Central Railroad Company of New Jersey as origin, intermediate or terminal carrier from, to, or via such points.

State Line Jct., N. J.-Pa., is the junction point between The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania, on traffic moving from, to, or via such carriers.

Issued September 3, 1946. Effective September 6, 1946. (Except as noted.)

Issued on one day's notice under permission of the Interstate Commerce Commission No. 30282 of August 21, 1946, and under authority of: Pennsylvania Public Utility Commission Special Permission No. 21944 dated August 22, 1946.

The form of this publication is authorized by Special Permission of the Interstate Commerce Commission No. 30282 of August 21, 1946.

Departure from terms of Circular No. 5 authorized by Special Permission of the Pennsylvania Public Utility Commission No. 21944 of August 22, 1946.

I. N. Doe, Agent, Room 524, South Station, Boston 10, Mass.
B. T. Jones, Agent, 608 So. Dearborn St., Chicago 5, Ill.
L. E. Kipp, Agent, 516 W. Jackson Blvd., Chicago 6, Ill.
W. M. Matthews, Agent, 407 McGill St., Montreal 1, Que.
R. G. Raasch, Agent, 516 W. Jackson Blvd., Chicago 6, Ill.
R. H. Hoke, Agent, 101 Marietta St., Atlanta 3, Ga.
D. Q. Marsh, Agent, 313 North 9th St., St. Louis 1, Mo.
A. H. Carson, Alternate Agent, 1015-101 Marietta St., Atlanta 3, Ga.

Issued by W. S. Curlett, Agent, 143 Liberty St., New York 6, N. Y.

Number of this supplement	I. C. C. No.	MF-I. C. C. No.	FF-I. G. C. No.	C. T. C. No.	Tariff No.	State commission numbers
11	A-818			A-357	1-B	
	(2)3054			(2)1030		
3	A-647			A-377	2-D	
	(2)4032			(2)1071		
11	A-634				3-E	P. S. C.-Md. A-32, P. S. C.-N. Y. A-96, Pa.-P. U. C. A.-94; V. C. C. A-44, P. S. C.-W. Va. A-6.
18	A-812	A-43		A-451	5-C	
34	A-803				6-B	
	(2)3186					Ohio 1784.
30	A-863				10-C	
7	A-827	A-56		A-384	11-D	
	(2)827	(2)69		(2)443		
130	A-831			A-411	14-D	V. C. C. A-45.
33		A-41			14-D	
61	A-823			A-391	23-N	P. S. C.-N. Y. A-141, Pa. P. U. C. A-118, P. S. C.-W. Va. A-79.
71	A-486			A-283	25-B	P. S. C.-N. Y. No. A-51.
96	A-809			A-389	29-E	
	(2)3186			(2)1084		
37		A-45			29-E	
		(2)105				
5	A-842				30-Q	
7	A-796			A-394	31-A	
	(2)836			(2)435		
81	A-799			A-396	37-F	
51	A-770			A-520	43-D	
115	A-647			A-425	43-E	
	A-820	A-51		A-[illegible]	44-I	
47	(2)827	(2)64		(2)[illegible]		
	(2)3175	(2)110		(2)[illegible]		
	(2)938	(2)114				
77	A-709			A-405	48-D	
89	A-814			A-399	49-A	
13		A-47			49-A	
48	A-680			A-437	51-B	
15		A-44			51-B	
62	A-808			A-454	52-A	P. S. C.-N. Y. A-110, Pa. P. U. C. A-94, P. S. C.-W. Va. A-66.
34	A-808				52-A	
11	A-792			A-389	55-C	

For explanation of reference marks, see page 570 herein.

Number of this supplement	I. C. C. No.	MF-I. C. C. No.	FF-I. C. C. No.	C. T. C. No.	Tariff No.	State commission numbers
44	A-700			A-611	60-A	K. R. C. A-12, Pa. P. U. C. A-112.
154	A-321			A-189	61	P. S. C.-N. Y. A-61, Vt. P. S. C. A-1.
144	A-322				62	P. U. C.-N. J. A-2, P. S. C.-N. Y. A-62.
143	A-323			A-189	63	P. S. C.-N. Y. A-63, Pa. P. U. C. A-40.
151	A-324				64	P. S. C.-Md. A-3, P. U. C.-N. J. A-3, Pa. P. U. C. A-41.
146	A-325			A-190	65	P. S. C.-Md. A-4, P. S. C.-N. Y. A-64, Pa. P. U. C. A-42.
148	A-326			A-191	66	P. S. C.-Md. A-7, Pa. P. U. C. A-43, P. S. C.-W. Va. A-29.
155	A-327				67	P. S. C.-Md. A-8, Pa. P. U. C. A-44, Va. C. C. A-12, P. S. C.-W. Va. A-30.
53	A-755			A-304	68-A	P. S. C.-N. Y. A-120, Ohio A-22, Pa. P. U. C. A-111, P. S. C.-W. Va. A-76.
165	A-339			A-195	69	P. S. C.-Md. A-11, Va. C. C. A-13, P. S. C.-W. Va. A-33.
156	A-340			A-194	70	K. R. C. A-2, Pa. P. U. C. A-46, Va. C. C. A-14, P. S. C.-W. Va. A-32.
65	A-744	A-35		A-407	71-A	Ohio A-26, P. S. C.-N. Y. A-122, V. P. S. C. A-20.
	(1)459	(1)54		(1)391		P. S. C.-N. Y. 22, V. P. S. C. 22.
20	A-619			A-558	73-D	P. U. C.-N. J. A-26, P. S. C.-N. Y. A-136, Ohio A-26.
57	A-609			A-386	73-B	
66	A-635			A-413	73-C	
	(1)375			(1)325		
	(2)3326			(1)1037		Ohio 1882.
51	A-574			A-372	79-B	
40	A-694			A-407	82-C	
	(1)460			(1)383		
134	A-726	A-23		A-424	82-D	
	(2)443	(1)46		(1)380		
	(2)3600	(1)76		(2)1763		
	(4)724	(1)202				
942 22	A-363				87	
	(1)191					
60	A-6[illegible]			A-413	89-A	
	(1)377			(1)394		
94		A-43			89-A	
		(1)56				
121	A-797	A-60	A-4	A-637	90-J	K. R. C. A-14, P. S. C.-Md. A-66, P. U. C.-N. J. A-24, P. S. C.-N. Y. A-135, Ohio A-24, Pa. P. U. C. A-115, Va. C. C. A-62, Vt. P. S. C. A-20, P. S. C.-W. Va. A-78.
20	A-608			A-547	93-G	P. S. C.-N. Y. A-137, Pa. P. U. C. A-117.
19	A-450			A-275	94-A	
11	A-313			A-533	99-B	
28	A-704			A-435	101-B	

	A-630	A-57			102-G	P. S. C.-Md. A-51, P. U. C.-N. J. A-57, P. S. C.-N. Y. A-142, Pa. P. U. C. A-119, Vt. P. S. C. A-36, Va. C. C. A-64, P. S. C.-W. Va. A-60.
	①630	①70			①63-G	Conn. P. U. C. 11, Maine P. U. C. 45, Md. D. P. U. 31, N. H. P. S. C. 38, R. I. P. U. A. 34, P. S. C.-N. Y. 38, Vt. P. S. C. 30.
30	①[illegible]	①136			①351-E	Ill. C. C. [illegible], Ind. R. C. D-[illegible], K. R. C. 91, Mich. P. S. C. [illegible], P. S. C.-N. Y. [illegible], Ohio 2142, Pa. P. U. C. 216, P. S. C.-W. Va. 289.
	①[illegible]	①64			①71-E	Ill. C. C. 268, Ind. R. C. 182.
34	A-585			A-578	103-A	
	A-616	A-54		A-[illegible]	104-D	
	①519	①67		①420		
35	①2052	①128		①1028		Ohio 2130.
	①505	①53		①61		
	①975	①336				
50	A-665			A-[illegible]	105	
	A-767	A-[illegible]		A-513	107-C	
62	①679	①57		①404		
	①A-3440	①A-140		①A-[illegible]		
	A-601			A-391	109-B	
93	①357			①[illegible]		
	①A-2973			①A-[illegible]		
		A-21			109-B	
70		①[illegible]				
		①A-[illegible]				
33	A-[illegible]			A-[illegible]	111-A	
56	A-733			A-[illegible]	114-C	
10	A-659			A-434	115-B	P. S. C.-N. Y. A-102.
g142	A-795				116-B	P. U. C.-N. J. A-62, P. S. C.-N. Y. A-152.
	A-547	A-37		A-349	118-A	
	①332	①51		①277		
18	①3062	①81		①2515		
	①225	①225		①30		
	A-726				120-B	
26	①441					
	①3427					
	A-732				121-B	
56	①446					
	①3613					
	①3440					
			A-6		131-B	
6			①7			
			①11			
			①6			
26	A-727	A-82		A-485	122-C	
	①442	①48		①379		
16	A-717				125-D	
	①3361					
41	A-731			A-490	128-A	
	①129			①1307	①42-A	
26	A-367			A-367	136	

For explanati n of reference marks, see page 570 herein.

	Number of this supplement	I. C. C. No.	MF-I. C. C. No.	FF-I. C. C. No.	C. T. C. No.	Tariff No.	State commission numbers
		A-750	A-40		A-[illegible]	123-B	Ohio A-23, V. C. C. A-61.
		[illegible]	[illegible]		[illegible]419		
	44	[illegible]	[illegible]114		[illegible]1879		
		[illegible]	[illegible]				
	6	A-[illegible]			A-545	120-B	
		A-[illegible]			A-[illegible]	123-B	
	45	[illegible]8742			[illegible]1887		Ohio 2062.
		A-[illegible]			A-542	123-C	
942	51	[illegible]76			[illegible]1901		Ohio 2160.
		A-[illegible]			A-544	134-B	
	7	[illegible]510			[illegible]		
		[illegible]			[illegible]		
	13	A-614			A-[illegible]	136-A	
	5	A-[illegible]			A-[illegible]	137-A	
		[illegible]			[illegible]457		
	10	A-750				139-B	P. S. C.-Md. A-47, P. S. C.-N. Y. A-127, Pa.-P. U. C. A-109.
	12	A-751				139-C	P. S. C.-Md. A-42, P. S. C.-N. Y. A-128, Pa.-P. U. C. A-110.
	35	A-[illegible]			A-[illegible]	140	
		[illegible]422			[illegible]		
		A-[illegible]	A-36	A-5	A-571	141-D	
	11	[illegible]	[illegible]71	[illegible]6	[illegible]455		
		[illegible]4029	[illegible]130	[illegible]9	[illegible]1968		
		[illegible]100	[illegible]26	[illegible]8	[illegible]37		
	25	A-734			A-[illegible]	142	
	56	A-601			A-541	145-A	
		A-644			A-574	145-B	
	[illegible]1	[illegible]			[illegible]1978		Ohio No. 2179.
	17	A-771			A-516	146	P. S. C.-N. Y. A-132, Pa. P. U. C. A-114, V. C. C. A-[illegible].
		A-794			A-[illegible]	149	
	8	[illegible]304			[illegible]424		Maine P. U. C. 42.
		[illegible]			[illegible]1887		
	8	A-[illegible]				153	
		A-[illegible]				164-A	Ill. C. C. A-2, Ind. R. C. A-4, P. S. C.-Md. A-[illegible], P. U. C.-N. J. A-20, P. S. C.-N. Y. A-148, Pa. P. U. C. A-121, Vt. P. S. C. A-[illegible], Va. C. C. A-[illegible], P. S. C.-W. Va. A-62.
	5	[illegible]				[illegible]-A	Conn. P. U. C. 13, Maine P. U. C. 47, M. D. P. U. [illegible], N. H. P. S. C. [illegible], P. S. C.-N. Y. 61, R. I. P. U. A. 26, Vt. P. S. C. [illegible].
		[illegible]4082				[illegible]628	Ill. C. C. 542, Ind. R. C. D-[illegible], K. R. C. [illegible], Mich. P. S. C. [illegible], P. S. C.-N. Y. 272, Ohio 2180, Pa. P. U. C. [illegible], P. S. C.-W. Va. [illegible].
		[illegible]					Ill. C. C. [illegible], Ind. R. C. 164, P. S. C. Mo. [illegible].
	4	A-642	A-[illegible]			156	
		[illegible]	[illegible]				

[illegible] Agent. [illegible] Agent. [illegible] Agent.
[illegible] Agent. [illegible] Agent. [illegible] Alternate Agent.

944 Before the Interstate Commerce Commission

Docket No. 28714

SWIFT & COMPANY

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

Railroad defendants' petition for reconsideration, reargument, and modification of findings

945 Come now The Baltimore & Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago & St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and The Wheeling & Lake Erie Railway Company, railroad defendants in the above entitled proceeding, and file this, their petition for reconsideration, reargument, and modification of findings; and in support of said petition, respectfully show:

In report and order, dated May 3, 1946, Docket 28714, the Commission found that the present practice of defendants (among which is The Cleveland Union Stock Yards Company) in refusing to deliver to the sidetrack of Complainant, in Cleveland, Ohio, interstate shipments of livestock, carried over their lines and consigned thereto, is in violation of section 3 (1), section 1 (6), and section 1 (9), of Part I of the Interstate Commerce Act; and ordered said defendants, or either of them, to (1) cease and
946 desist, on or before the 30th day of August 1946, and thereafter to abstain from refusing to deliver to said sidetrack complainant's interstate shipments of livestock carried over defendants' lines and consigned thereto; and (2) to establish and put in force, on or before the 30th day of August 1946, upon not less than thirty days' notice to this Commission and general public, as provided in section 6 of the Interstate Commerce Act, and maintain in force thereafter, a schedule or schedules providing for the delivery to said sidetrack of complainant's interstate shipments of livestock carried over defendants' lines and consigned thereto; said order to remain in full force and effect until the further order of the Commission.

On July 19, 1946, a request by letter was made to stay the effective date of the order pending the decision of the Commission with respect to this petition. A telegram dated July 25, 1946, received from the Hon. Ulysses Butler, states that the effective date of the order is "postponed to October 30 on fifteen days' notice."

I

Railroad defendants are somewhat perplexed at the misconstruction and misapplication of law and the court decisions and also at the inconsistent and contradictory observations and conclusions contained in the report and order of the Commission dated May 3, 1946, on which the Commission based its finding in favor of the complainant. Our amazement is further increased when we consider that two hearings have been held and two separate reports[1] proposed by three different Examiners recommended dis-
947 missal of the complaint. Railroad defendants contend that a proper construction of the law and the few applicable court decisions which are available, as well as the important history of complainant's relationship with the Stock Yards Company, have been entirely ignored, in considering the principles involved in this novel and unprecedented question, which has many important and interesting phases. The conclusions reached in the report and order of May 3 are unsupported by any evidence in the record or any applicable law or any fair interpretation thereof. This report and order provides a striking contrast to the two reports of the Examiners whose findings in favor of the defendants were based upon undisputed facts in the record and such applicable law as was available.

The decision

(1) erroneously assumes facts to which have been applied erroneous interpretations of law and decisions found in complainant's brief, and fails to consider, or completely and unjustifiably ignores, the facts and applicable decisions which are presented in railroad defendants' Reply to Exceptions of Complainant, dated September 25, 1945.

(2) Utterly disregards the practices and rules promulgated by the Commission in connection with Ex Parte 104, Part II, Terminal Services, which practices and rules were upheld by the United States Supreme Court in U. S. of A. and I. C. C. vs. American Sheet and Tin Plate Company, et al., 301 U. S. 402–412, decided October 11, 1937.

(3) Would require an absolute violation by the New York Central of the practices and rules prescribed in Ex Parte 104.
948 (4) Would provide complainant with such superior services and conveniences as constitute undue preferences and advantages which are not extended, or required to be extended, to shippers generally.

[1] April 1943, Paul O. Carter, Examiner.
June 1945, T. Leo Haden and A. J. Banks, Examiners.

(5) Ignores entirely the uncontradicted early history and circumstances, including the history of the relationship between the complainant and the Stock Yards Company which gave rise to the present controversy. This omission is, indeed, a pronounced contrast to the position taken by the Commission in determining the issues in the Chicago Stock Yards Case (Swift & Co. vs. Alton Rd., et al., 238 I. C. C. 179), which was affirmed by the United States Supreme Court May 4, 1942, in Swift & Co. vs. United States, 316 U. S. 216, 86 L. Ed. 1391. The early history of the relationship between Swift and Company and the Stock Yards Company in the instant case is equally as important as was the relationship between the packers and the Stock Yards enterprise at Chicago, which was considered by the Commission and the Court as being extremely important.

(6) Contains assumptions of fact which cannot possibly be supported by the record.

(7) Unjustifiably and inequitably penalizes the New York Central for having obtained the best arrangement possible for the use of the 1,619 feet of track owned by the Stock Yards Company for delivery of such commodities consigned to complainant's plant as the owner of the track would permit to be moved thereover, after which complainant, while a stockholder in, and having its General Manager a member of the Board of Directors of, the Stock Yards Company, instituted the practice of consigning carload shipments of livestock to complainant's plant over the
949 track owned by Stock Yards, which shipments the Stock Yards Company considered to be competitive to its primary business.

(8) Tends to take the property of the Stock Yards without due process of law.

(9) Ignores the fact that, through the relationship and dealings which existed for many years between complainant and the Stock Yards Company, complainant had full knowledge at all times of the carefully guarded control retained by Stock Yards Company of its 1,619 feet of track and the restricted use thereof all of which certainly creates in any court of law or equity an estoppel to complainant's now asserting that this is a public spur in which it has acquired a vested interst.

(10) Would create prolonged, fruitless, litigation between the New York Central and the Stock Yards Company, inasmuch as the Commission lacks power to enforce its order so far as said order would subject the property of the Stock Yards Company to use for the benefit of complainant or the railroad.

(11) Tends to create new rights for the future for complainant, rather than disposing of the controversy involved under present contracts and existing practices.

(12) Indicates that the majority of the Commission has, by implication, recognized that the 1,619 feet of Stock Yards track has not become dedicated to public use, yet the report fails to give any factual recognition or legal effect whatever to that fact; rather the Commission seems to have strained throughout its report to nullify and circumvent that fact in contrast to the dissenting Commissioner's frank and open meeting of that undisputed fact in the record.

(13) Indicates that the majority is utterly inconsistent in acknowledging that the Stock Yards Company may
950 withdraw its 1,619 feet of track from use altogether but cannot lawfully limit its use—a proposition which literally flies in the teeth of common sense and the fundamental concepts of the law of property.

In addition, railroad defendants submit that they are unable to see how the order can be carried into effect. Five of the railroad defendants do not have any track connection with the 1,619 feet of track owned by Stock Yards Company, so that these five railroad defendants certainly cannot publish any tariffs providing for service over that track, and are not in position to negotiate any arrangement for the use of that track under the existing circumstances. These railroads are entirely dependent upon whatever arrangement the New York Central can effectuate.

The New York Central is left helpless and in an unprecedented and most incongruous position. It is not clothed with power to compel the Stock Yards Company to extend the use of its 1,619 feet of track to the New York Central to make possible the delivery of carload shipments of livestock to the private siding of complainant, as is required by the order of the Commission. The Stock Yards Company remains adamant in its refusal to permit the use of its track for the movement thereover of competitive shipments of livestock except for compensation approximating its handling, yardage, and storage charges. The unyielding position of the Stock Yards Company in this respect has been made clear to the Commission in the two hearings, arguments in connection therewith, and its petition for reconsideration recently filed in this proceeding.

951

II

The foregoing order of the Commission is in direct conflict with and would, in effect, compel the railroad defendants to violate the rules and practices prescribed by the Interstate Commerce Commission in Ex Parte No. 104, Part II, Terminal Services, decided May 14, 1935, 209 I. C. C. 11, et seq., and the numerous decisions of the Commission rendered since the reports contained in Volume

209, in connection with operating practices in terminals and revenues or expenses in connection therewith.

Railroad defendants submit that if the order of the Commission is allowed to stand, that it will, in violation of the rules and practices prescribed by the Commission in Ex Parte 104, require railroad defendants to render a service to complainant which will constitute

(a) An allowance to the complainant by the performance of a service by carriers which is not performed, or required to be performed, for other shippers, generally, and particularly the alleged three competitors, i. e., The Lake Erie Provision Company, Long Dressed Beef Company, and Ohio Provision Company.

(b) Delivery beyond point of interruption or interference for the convenience of complaints; and

(c) Rendering a service to complainant which is beyond simple placement or team-track spotting of carload shipments.

The principles and reasoning underlying the findings and order in Ex Parte 104 are applicable in their entirety to the facts of the within case. Certainly the action of the Stock Yards Company in restricting the movement of carload shipments of livestock over its 1,619 feet of track constitutes an interruption and interference which is beyond the control of railroad defend-
952 ants. Railroad defendants did not originate the interruption and interference and are powerless to remove it. Complainant initiated the cause by starting to consign carload shipments of livestock directly to its plant, which, because of not having its own direct track connection, necessitated movement over the 1,619 feet of track belonging to Stock Yards Company, without making any known arrangements therefor with the Stock Yards Company, and at a time when complainant was a stockholder in and, through an interlocking directorate, had some control over affairs of the Stock Yards Company. After initiating this practice, complainant increased the volume of such shipments to an extent which the Stock Yards Company alleged was detrimental to its financial interests, which resulted in the Stock Yards Company enforcing restrictions on the use of its 1,619 feet of track for such shipments. So long as the Stock Yards Company sees fit to enforce its restrictions with reference to the movement of carload shipments of livestock over its 1,619 feet of track, any attempt by the railroad defendants to provide service to complainant for its carload shipments of livestock over the Stock Yards Company's tracks would constitute an infringement of the property rights of the Stock Yards Company, would render the railroad defendants answerable in damages in court, and would be enjoinable under the laws of Ohio.

Railroad defendants are unable, under the laws applicable to property rights, to comply with the finding and order of the Commission in the within case, which require the railroad defendants to do an impossible thing. Railroad defendants do not have ownership, dominion or control over the 1,619 feet of track which is solely owned and controlled by the Stock Yards Company,
953 the ownership, dominion, and control of which by the railroad defendants would be necessary in order to comply with the order of the Commission.

Moreover, the service which the Commission is ordering the railroad defendants to provide in this case would cause undue and unreasonable preference and advantage to the complainant, which service is not accorded to shippers generally, and would provide a superior service and convenience to complainant which the Commission has not required be accorded to shippers generally or any other shipper, so far as we are able to determine from the decisions of the Commission.

III

Railroad defendants encounter difficulty in endeavoring to reconcile the contradictions and inconsistencies in the Commission's position that the Stock Yards cannot restrict the use of its track as it sees fit, on the one hand with the Commission's apparent position, on the other, that the Stock Yards can deny the use of the track altogether.

If such an inconsistent position can be reconciled, it is only upon the basis that in the first instance the New York Central is a party (however unwilling) to the restriction by the Stock Yards of the use of its track in violation of the railroad's duties under the Act, if, in fact, The New York Central Railroad Company does violate its duties under the Act in accepting the only reasonable compromise arrangement possible, by direct negotiation with the owner of the track.

Some bewilderment is presented in the finding of the Commission, on sheet 10, reading as follows:

"* * * By the contract, the Stock Yards is not withdrawing its tract from public use but, on the contrary, is contracting
954 for its continued use as part of the railroad's common carrier spur, No. 245. *Whatever may be the right of the Stock Yards to altogether withdraw its track from public use*, it seems evident and we so conclude, that the attempted special exception as to livestock could not, and has not, changed the common carrier status of the New York Central's spur No. 245 but that the latter remains with respect to its said spur, as much subject to the Act and its provisions as it is with respect to any other part of its

railroad or facilities whereby it performs terminal services at Cleveland or other places." [Italic ours.]

and on sheet 12 the Commission finds:

"* * * *Whatever may be the Stock Yard's right to altogether withdraw its track from public use, in our opinion it may not, so long as contracting for its continued public use,* exact compensation on any such basis. *In any event, here we must look to the present contract and act on the existing practices. We cannot conjecture as to the future arrangements further than to assume that they will be lawful. Under the present contract* the New York Central is obligated to maintain track 1619 in good condition and repair but it seems manifest, and we so conclude, that, by resuming its duty to make deliveries of livestock over its spur, it will not incur lawful obligation to pay yardage charges assessed as a penalty if it performs such a duty." [Italics ours.]

The foregoing italicized qualifications apparently warrant the following comment in the dissenting opinion of Commissioner Splawn on sheet 22:

"There is an inference in the majority report, twice mentioned, that the Stock Yards Company may have the right to withdraw altogether its track from public use."

The foregoing inference is also consistent with the rec-
955 ognition which the Commission gives to the right of the Stock Yards Company and New York Central to contract with respect to the use of the Stock Yards' track within the limitations expressed by the Commission's decision and the failure of the Commission to adopt the position taken by complainant that this track had become dedicated to a public use and could not be withdrawn from public service.

Many inconsistent observations and conclusions in the decision are indicative of the uncertainty and doubt which must have existed in the minds of the Commission with respect to what relief, if any, could be granted complainant by the Commission.

If the objectives of the statutory provisions and the decisions upon which the Commission relies are adequacy and uniformity of public service, certainly the New York Central's action in securing on such terms as may have been or may be obtainable, partial use of the track for traffic other than livestock, should be considered to bring the New York Central more nearly in line with legislative policy than a course of action which would foreclose the benefits of the track altogether.

As owner of the 1,619 feet of track, and having retained control thereof at all times (with full knowledge thereof by the complainant conclusively removing any justification for finding a dedication to public use), the Stock Yards Company would, under the law, as we understand it, have the right to take out the rails and

remove the track from any use, unless the Commission can be found to be clothed with power over the Stock Yards to prevent it from so doing, or a Court having jurisdiction of the Stock Yards' property would enjoin the Stock Yards Company or decree otherwise.

In this connection, there is justification for concluding
956 that the majority is in the inconsistent and unrealistic position of suggesting that the legislative policy would more nearly be accomplished by withdrawing all benefits of the track and leaving the complainant and other shippers who are dependent upon its use, completely without rail service. This inconsistent position seems to be fostered by other unrealistic aspects of the Commission's reasoning, where, on sheet 7, the Commission states the principal issue, as follows:

"The carrier's defense presents the question of whether a railroad, by entering into a contract with the Stock Yards Company aimed at compelling shippers making livestock shipments to Swift and the other industries beyond the track of the Stock Yards Company to use the facilities of the Stock Yards Co., can abrogate obligations placed upon it, in the public interest, by the Interstate Commerce Act. It is our opinion that it can not, and that the relief sought by Swift should be granted."

and on Sheet 12 the Commission also states:

"It seems evident and, in any event, will be shown, that the railroad could not lawfully single out and exclude livestock from the traffic transported over its common carrier spur."

The foregoing quotations from the decision indicate that for the purpose of its findings the Commission seems to treat the New York Central as an initiating party, along with the Stock Yards, in the special arrangement with respect to the use of the Stock Yards' track as to livestock and that this restriction is the product of joint motivation on their part. This implication in its particular context in the report seems to be misleading, unrealistic from the standpoint of the evidence, and exceedingly prejudicial and unfair to the New York Central. It cannot be reconciled
957 with the true picture as presented in the quotation from the oral argument of counsel for the New York Central at the top of sheet 16 or with other discussion on sheet 11 of the Stock Yards' motives for "the very singling out of livestock for the requirement of special compensation from the railroad * * *." *In finding for complainant, the Commission in the first of the foregoing quotations states the question at issue in this case in a manner which begs the question and makes the answer in complainant's favor a foregone conclusion. The problem in this case should not be approached in that manner but the issues and facts should be faced forthrightly.*

When the issue in any case is not stated in an impartial and complete manner, it is practically a foregone conclusion that the ruling on the issue will be erroneous—as it proves to be in this case. We respectfully submit that the manner in which the issue in this case is stated at the outset, on Sheet 7, in and of itself condemns this report. It does not state the true issue at all, but apparently reflects a fancied determination to spell out a case for complainant.

There is nothing in the record to justify any assumption by any one that the New York Central instigated in any way whatsoever the restrictions placed on the 1,619 feet of track owned by the Stock Yards Company or that the restrictions are beneficial in any way to the New York Central. The record is replete with evidence showing that the complainant, with full knowledge that the 1,619 feet of track was owned by the Stock Yards Company, and after full consideration and long deliberation, chose to, and did, provide the right-of-way and obtain an ordinance permit to cross West 65th Street so as to enable it to procure an indirect track connection with the New York Central main tracks by using
958 the 1,619 feet of track owned by the Stock Yards Company with all of the attendant uncertainties (of which the present development is one), rather than to provide its own direct connection with the New York Central's tracks at the northerly end of West 63rd Street.

This last-mentioned direct track connection to complainant's plant could have been provided at any time by complainant so as to entitle complainant to all of the rights which complainant is now demanding. However, complainant deemed such direct track connection to be economically undesirable because from 1908 to 1930 complainant was contented to accept delivery of its car load shipments of livestock through the unloading facilities of the Stock Yards and the delivery of its other commodities at its plant by the use of the 1,619 feet of track owned by the Stock Yards Company.

The treatment of the factual situation in the decision is somewhat in contrast to the candid presentation of the same situation bearing upon the past relationships of Stock Yards, New York Central and Swift & Co. set forth at length in the report of the entire Commission in The Baltimore & Ohio Railroad Co. vs. The Cleveland Union Stock Yards Co., 255 I. C. C. 579–598. The latter report makes it perfectly clear that the Stock Yards Company did in the past, and still does, completely dominate and control the use of Track 1619, and further, that complainant's past course of action largely contributed to placing it in its position of dependence upon that track. In the present report this aspect of the record is ignored—it is left to the dissenting Commissioners

to portray the true situation. The inconsistency between the pictures painted in these two reports is certainly unjustified in view of the stipulation made in Docket 28714 that the facts stated
959 in the Commission's decisions in Finance Docket No. 14038 and No. 28421, and related dockets (255 I. C. C. 579, *supra*), could be considered as facts in the present proceeding. There is no dispute as to facts in the detailed report in Docket No. 28421 and related cases, which are set forth candidly and in full.

All provisions pertaining to the use of the 1,619 feet of track owned by the Stock Yards Company and all restrictions of every kind pertaining to that track were dictated by the owner of the track. The failure of the New York Central to accept such terms and conditions might very likely have resulted in the owner closing the track to all commodities. The New York Central should not be penalized simply because the complainant, in its highly favored relationship with the Stock Yards Company during those long years of intimate dealings, succeeded in creating a situation by degrees which led to the use of the 1,619 feet of track owned by the Stock Yards Company for movement of carload shipments of livestock to complainant's plant, which the Stock Yards Company considered to be competitive to the Stock Yards' own business, as well as being financially detrimental thereto, and then to have the Stock Yards Company withdraw from service such use of its track, leaving the New York Central an innocent and helpless victime between the respective interests of the Stock Yards Company and the complainant.

Furthermore, throughout the discussion on sheets 9 to 14, inclusive, the Stock Yards Company track is so related to that of the New York Central spur 245 that the former seems to assume the color and character of the latter in the consideration of the Commission. On sheet 9, the Commission says:
960 "* * * Obviously the fact that the New York Central, acting in compliance with its private agreement with the Stock Yards, is at the present time refusing to transport particular traffic over *its spur* does not alter the fact that the use it is making of the spur, including Track 1619, is generally for all traffic offered and all industries reached and is not one confined to the serving of the Stock Yards or other particular plant. * * *" [Italics ours.]

The record would not seem to justify any suggestion that the failure to make delivery pertains to the New York Central's spur No. 245. While the two tracks are related in purpose, they are not related from the "refusal-to-transport" angle. The effort of the Commission to relate them in the latter sense again emphasizes the majority's unrealistic and confused approach to the facts and

legal issues involved. But for the Stock Yards Company's absolute control over track 1,619 this case would not have arisen. There is not a particle of dispute about that. It is the central fact around which this entire case turns. The dissenting Commissioners face this fact squarely but the Commission strains to give it no effect.

IV

The decision finds a violation of section 3 (1), which is based upon misstated facts, some of which are contained in the second full paragraph on sheet 5. To conform with the record that part of the decision should read as follows:

"From 1910 until the present time railroad defendants transported all classes of freight, exclusive of livestock, to and from complainant's siding over the 1,619 feet of track owned by the Stock Yards Company. From January 1, 1930, to February
961 1, 1935, Swift & Co. received 1,161 carloads of livestock, at its plant siding over the 1,619 feet of track owned by the Stock Yards Company.

"Railroad defendants also transport carload shipments of livestock to the private sidetracks of complainant's competitors, The Lake Erie Provision Company, Long Dressed Beef Company, and Ohio Provision Company, whose plants are in the same general locality as the Stock Yards, *but said three competitors have their own private sidetracks connecting directly with the main tracks of The New York Central Railroad*, without any intervening privately owned sidetrack, and they are served by The New York Central Railroad without using tracks belonging to the Stock Yards."

Again, on sheet 13, a similar statement is repeated and the conclusion is reached that

"this service is performed by defendant carriers at the line-haul rate to Cleveland and the three plants are all located in the same general section of the New York Central's Cleveland Yard as that in which complainant's plant is located. The evidence shows, and we so find, that, with respect to the service, including the effecting of plant delivery, involved in transporting livestock to all of the plants, including that of complainant, *the circumstances and conditions of transportation are substantially the same; that all plants are engaged in the same general business*, buying their livestock in the same markets and disposing of the same dressed products in the same consuming territory; *and that active competition exists between them in purchasing the live animals and in selling the dressed products.* Accordingly, we conclude that the defendant carriers' failure, in connection with the transportation of carload shipments of livestock consigned to complainant's

plant, to accord delivery thereof on the latter's sidetracks, while according such service in connection with like shipments
962 consigned to its competitors, subjects complainant to undue prejudice and unduly prefers the competing plants above named."

The first principle in the Commission's many decisions with respect to Section 3 issues is that the circumstances and conditions applying to the compared situations must be substantially similar. They are not substantially similar in the cases discussed in the decision because of the Stock Yards Company's control over its track, as pointed out in Commissioner Splawn's dissenting opinion. In the recital of facts on sheets 5 and 13 referred to above, the Commission recognizes this distinguishing fact, for it says that the defendant carriers are transporting shipments of livestock "directly to the plants of complainant's competitors, The Lake Erie Provision Company, Long Dressed Beef Company, and Ohio Provision Company, whose private sidetracks are adjacent to the Stock Yards *but are served without using tracks of the Stock Yards.*"

It would be difficult to conceive of a more substantial distinction between the situation of the last-named packers and the complainant than that arising from the fact italicized above. If the Stock Yards Company exercised its implied right to close its track altogether, the distinction could scarcely be overlooked. In the teeth of this distinction, the Commission then proceeds to find, on sheet 13, that undue prejudice against complainant exists because

"all plants are engaged in the same general business, buying their livestock in the same markets and disposing of the same dressed products in the same consuming territories; and that active competition exists between them in purchasing the live animals and in selling the dressed products."

963 Then, on sheet 5, the Commission also states:

"* * * the three competitive plants are all located in the same general section of the New York Central's Cleveland Yard as that in which complainant's plant is located."

In calling to mind the Commission's close heed to the peculiar facts of each situation and decisions under Section 3, including those involving rights as to tracks, it seems highly inconsistent and a wide departure for the Commission in this instance to push to the background such a salient factual distinction as the Stock Yards Company's control of its 1,619 feet of track and to place in the forefront, as a basis for a finding of Section 3 violation in this controversy, such general indistinctive factors as (a) the existence of business competition among the packers involved, and (b) the proximity of these packers to the New York Central's Cleveland

Yard. Rex Jellico Coal Co., et al., vs. L. & N. R. R. Co., 237 I. C. C. 67, at pages 70–71; Certain-teed Products Corp. vs. CRI&P Ry. Co., et al., 68 I. C. C. 260; Winnsboro Granite Corp. vs. Southern Ry. Co., 176 I. C. C. 481, page 483; Clover Splint Coal Co. vs. L. & N. R. R. Co., 197 I. C. C. 276, at page 277.

Under the latter general conditions, almost any difference in treatment, however short of being an undue difference, would lay the major foundation for a Section 3 violation. The Commission could certainly call to mind all manner of situations which have come before it wherein such common factors as business competition and physical proximity have applied to the compared situations and yet the Commission has found no Section 3 violation to exist because of peculiar trackage or other conditions pertaining to one party, but not others. In this case, however, the
964 Commission strains the other way in order to find, among the most general factors in the packers' situation, some common denominator basis for Section 3 violation.

V

The decision indicates that the Commission has assumed certain facts which are absolutely at variance with the record and reached many conclusions which are erroneous. It has erroneously assumed that:

(1) Complainant did not knowingly and wilfully choose to obtain service to its plant, indirectly, by the use of the 1,619 feet of track owned by the Stock Yards Company rather than build its own track to a direct connection with a main line switch of the New York Central at the northerly end of West 63rd Street.

(2) The restrictions in the contract between the Stock Yards Company and the New York Central for the use of the 1,619 feet of track were sought by the New York Central, accompanied by some motive tending toward collusion with the Stock Yards Company to increase receipts of revenues by the Stock Yards.

(3) The defendants' line-haul rates for transporting carload shipments of livestock to Cleveland are sufficient to constitute reasonable compensation to the carrier, regardless of the charge which may be exacted by the Stock Yards Company as owner of the 1,619 feet of track for the use thereof for delivering carload shipments of livestock to complainant.

(4) The complainant is entitled to have delivery of carload shipments of livestock resumed over the track owned by Stock Yards Company so as to enable complainant to build and construct unloading chutes and facilities which have not been in exist-
965 ence in the past, and thus be able to unload at one time

several carloads of livestock as contrasted with the practice in the past, when only one carload could be unloaded at one time.

(5) If the service sought by complainant in its complaint is restored, complainant could receive its carload shipments of livestock without undue preference and advantage, which is not a fact.

(6) The undue preference and advantages which complainant enjoyed by reason of its imposition upon railroad defendants and the Stock Yards Company in consigning its shipments for delivery over the 1,619 feet of Stock Yards' track should be restored to complainant when such superior services and conveniences are not extended, or required to be extended, to shippers generally.

(7) The service rendered to the Lake Erie Provision Company, Long Dressed Beef Company, and Ohio Provision Company is similar to the undue preference and advantage in service which is sought by complainant; and

(8) It is possible for the railroad defendants to negotiate an arrangement with the Stock Yards Company to carry out the order of the Commission, as discussed on sheet 11, where the Commission says: "* * * the railroad could, so far as the contract was concerned, have followed the same course and thus have avoided the payment of any compensation, or charge, specially set up against the use of the track for the carriage of livestock."

Therefore, the railroad defendants urge that the facts outlined and the application of the law made in the report proposed by Examiners T. Leo Haden and A. J. Banks, are correct, and said report, with the findings in the last paragraph thereof modified as shown in the next paragraph hereinafter, should be adopted as a correct statement of the facts and findings of the Commission.

966 The Commission should dispose of the within complaint by finding that:

"That railroad defendants' failure to transport livestock directly to complainant's siding, over Stock Yards' track 1,619, is not shown to have been, or to be, in violation of the Interstate Commerce Act, as alleged. The technical departure from the provisions of section 6 (7) existing in certain tariffs discussed in the report should be corrected promptly by railroad defendants; however, this irregularity in the tariff is unimportant because we find that complainant had intimate knowledge at all times of the limited and restricted use of track 1,619 permitted by the Stock Yards Company. Railroad defendants could not, and cannot now, be expected to remove this obstacle over which they have no control. Complaint is, therefore, dismissed."

VI

This report and order is somewhat complex and confusing and makes difficult a discussion of its various phases in any orderly array. In the preceding part of this petition we have attempted to present the main points upon which we rely for showing the necessity and justification for granting a reconsideration, reargument, and modification of findings. *However, particular attention is directed to the conclusions beginning at page 38 which contain a full discussion of the available applicable law.*

In this Section VI other errors, inconsistencies, and misstatements in particular portions of the decision are discussed, which should be corrected if the complaint is not dismissed and which embrace, among other subjects, the following items of particular importance.

(1) Complainant's full realization of the chances it took
967 in using the 1,619 feet of track owned by the Stock Yards Company and the railroads' helpless situation in connection therewith, subheading (c).

(2) Complainant's desire to now enlarge its unloading facilities if delivery direct to its plant can be restored without cost to complainant, subheading (d).

(3) Distinguishing the case of Guyton & Harrington Mule Co. v. L. & N. R. R. Co., 50 I. C. C. 546, 550, subheading (g).

(4) Suggested short paragraph which would dispose of the irrelevant and confusing statements and erroneous conclusions which begin with the second full paragraph on Sheet 9 and extend to Sheet 14, subheading (h).

(5) Distinguishing the case of Cleveland, etc., Ry. Co., v. U. S. of A., et al., 276 U. S. 404, which was misapplied on Sheet 15 of the decision, subheading (j).

(6) A correct digest of the Baltimore Butchers Livestock Co. case, 20 I. C. C. 124, subheading (1).

(a) On Sheet 4, tenth line, in second full paragraph, the words "interested parties were" should be corrected to read "Complainant was." See Record Ex. 14, in which facts are stipulated showing that Swift & Co. was unwilling to spend $24,500.00 to build its sidetrack to connect directly with the right-of-way of the New York Central.

(b) On Sheet 4, the last sentence in third full paragraph should be deleted, and the following should be substituted therefor:

"At the request of complainant, and after complainant provided the right-of-way, and a permit from the City Council to build a track at grade across West 65th Street, the New York Central constructed the track and extended it to complainant's
968 plant, laying the track on right-of-way provided by com-

plainant in easements from the Stock Yards, complainant, Thurer-Norton Provision Company and other parties with whom arrangements were made by complainant."

See Exhibit No. 29, Record 208 and 217, and Sheet 10 of Exhibit 30, which support this requested substitution.

(c) The last paragraph on Sheet 4, and ending at top of Sheet 5, should be amplified by showing at the end thereof:

"Also, numerous other provisions, among which is the following:

"'Fourth. The Railroad shall have the right to cease, forthwith, and without notice, all operations upon said track, if compelled so to do by the owners, other than the respective parties hereto, of any portion of said track, or of the land upon which said track, or any portion thereof may be laid.'"

The next above quoted provision in the private sidetrack agreement between complainant and the New York Central on February 1, 1935, was made necessary because of the demands of the owner of the 1,619 feet of Stock Yards Company's track and should have indicated to complainant that the "owners of any portion of said track or of the land upon which said track or any portion thereof, may be held" might make new demands at any time, and failure of the New York Central to accept such terms as it could obtain for the use of the 1,619 feet of track owned by the Stock Yards Company might very likely have resulted in the owner closing the track to all commodities. Rather than discontinue service entirely to these industries, the New York Central accepted the course which enabled the shippers to obtain service to the greatest extent possible.

969 The record indicates clearly that complainant cannot claim, justifiably, that it was not fully aware, at all times, of the limitation imposed by the Stock Yards Company on the use of its 1,619 feet of track, inasmuch as the record is replete with evidence indicating complainant's awareness of such restricted and limited use of track 1,619, and also of complainant's choice of having its plant served by using the 1,619 feet of track owned by Stock Yards Company, rather than incurring the expense necessary in order to get complainant's own track connection directly with the New York Central main track, at the northerly end of West 63rd Street.

We direct your attention to the fact that in March 1910, Swift and Company indicated to the Freight Traffic Manager of the Big Four (Ex. 11) that inasmuch as it seemed impossible to do anything with a direct connection with the Big Four main track along Prim Avenue (now West 63rd Street), Swift believed that some arrangement might be made to get a sidetrack into the Peoples Packing Company plant (which was then owned by Swift and Company) by crossing West 65th Street (then known as Gordon

Avenue) and connecting in some manner with the 1,619 feet of track owned by the Stock Yards Company. The Big Four indicated its willingness to build the track across West 65th Street if Swift and other packers along West 63rd Street would furnish the right of way with perpetual easement for this track without cost and would obtain permission to cross West 65th Street with the track at grade.

Swift obtained this ordinance permit to cross West 65th Street with the track in order for Swift to obtain a connection with the 1,619 feet of track owned by the Stock Yards Company and thereover to reach the main line tracks of the Big Four (Ex. 29).

970 The right of way for this track east of the east line of West 65th Street was also procured by Swift and deeded to the Big Four. It included a small parcel of Sublot No. 166 adjoining the easterly side of West 65th Street. This Sublot No. 166 belonged to the Stock Yards Company (R. 208 and 217), which company, at the instance of Swift, conveyed an easement to the Big Four over said Sublot No. 166 (containing 1,024 square feet)—see sheet 10 of Ex. 30, which deed of conveyance contained the following reservation by the Stock Yards Company:

"It is understood however that in the event a connection between the Prim Street track and the main tracks of said Railway Company is made at or near Clark Avenue said grantor (Stock Yards Company) reserves the privilege of having the connection switch between the Prim Street track and the Stock Yards track removed."

In view of the foregoing evidence, can there be any question in anyone's mind that the complainant fully realized the uncertainties attendant upon transporting all commodities to and from its plant by the use of the 1,619 feet of track owned by the Stock Yards Company? Complainant full realized this and chose to assume whatever chances it may have to take in that respect.

(d) On Sheet 5, first full paragraph, fifth sentence, beginning in the eleventh line, the wording should be changed to read as follows:

"Complainant claims that by constructing movable platforms and placing them alongside the cars, several cars of livestock could be unloaded at one time hereafter; however, such operation has not been in effect in the past, and, therefore, is not of any consequence in this controversy."

971 If, as the report indicates, the Commission is addressing itself only to "the present contract" and the "existing practices" and not to future arrangements, it would seem to follow that if the "present practice" referred to in the order respecting delivery of livestock were changed by the Stock Yards Company's withdrawal altogether of its track from all use, the order of the Commission would become moot and inoperative.

Again, under the present contract and the practice which existed, complainant's facilities would not permit placing more than one car at a time for unloading, whereas complainant now seeks to provide for a new situation whereby it can build portable chutes and unload several cars at a time if it can get service restored for delivery of carload shipments of livestock directly to its plant.

(e) On Sheet 7, the last two sentences, in paragraph ending at top of sheet, should be changed to read as follows:

"A charge of $4 per deck, for performing the services of loading and unloading shipments of ordinary livestock at the stock yards, was paid and borne by the road-haul carriers from January 15, 1940, to and including June 9, 1942, which included the controversial question of delivery to complainant and all other consignees accepting rail-borne shipments of livestock through the Stock Yards' pens."

"The railroad defendants agreed to pay this charge in order to prevent interruption of the loading and unloading service in connection with carload shipments of livestock, pending the determination by the Commission of a reasonable charge for such service." 255 I. C. C. 579, decided May 11, 1943, fully supports this statement.

972 (f) On Sheet 7, the first full paragraph should be corrected to read as follows:

"Between 1916 and 1936, complainant owned stock in the Stock Yards' corporation. At the request of complainant's president, its plant managers at Cleveland from November 2, 1916, to April 28, 1936, were continuously made directors of the Stock Yards and were on the executive committee when there was such a committee. From 1920 to 1924 the traffic managers of complainant, the Stock Yards, and the Cleveland Provision Company formed a traffic committee which actively considered transportation matters. By order of the Supreme Court of the District of Columbia, dated January 31, 1931, complainant was directed to divest itself of ownership in public stock yards which was accomplished at Cleveland by February 8, 1936."

The foregoing phraseology is taken from the report proposed by Examiners, and is a correct recitation of the facts.

(g) On Sheet 7, in the third full paragraph, the third sentence should have added to it:

"unless and until such time as complainant makes arrangements for the use of the 1,619 feet of Stock Yards Company's track to transport shipments of livestock to complainant's plant siding." In the fifth sentence of the same paragraph, reference to the Guyton & Harrington Mule Co. vs. L. & N. R. R. (50 I. C. C., 546,

550), being "in respect of a somewhat similar situation at Nashville, Tenn." is erroneous.

There was not any restricted use of track or facilities or barriers of any kind, in the Guyton & Harrington Mule Co. case, in anywise similar to the conditions existing in the within case. The railroads admitted in that case that the new Stock
973 Yards, which had been designated the exclusive livestock depot of the railroads, were not adequate for handling mules and livestock other than ordinary livestock. When service was discontinued at the old Stock Yards, where the facilities were peculiarly suitable for loading and unloading mules for many years past, complainants had been damaged and were entitled to redress.

The Guyton & Harrington Mule Co. case has no application here and should be deleted from the report.

(h) Beginning with the second full paragraph on Sheet 9, and extending to the end of Sheet 14, all wording should be deleted, and in place thereof should be inserted the following:

"However, the relief sought in this complaint cannot be supplied under the Interstate Commerce Act, or by the Commission. Complainant should consider obtaining its own track connection directly with the New York Central main line right-of-way as a solution."

Among the reasons for suggesting the deletions hereinabove in this item, are that there are erroneous statements of facts which lead to erroneous conclusions; there is repetition of preceding portions of the report and arguments which are unsupported by the record and irrelevant to the actual controversy. This "dust-cloud" complicates and unjustly confuses the issue which will very likely find its way into a Court of law.

(i) On Sheet 15, the first full paragraph referring to the cases of I. C. C. vs. D. L. & W. R. R. Co., 216 U. S. 531, 537, and U. S. vs. B. & O. S. W. R. R. Co., 226 U. S. 14, 19, should be deleted, because of irrelevancy.

(j) On Sheet 15, the second paragraph relating to the au-
974 thority conferred upon the Commission by Section 1 (9) of the Act as held in the case of Cleveland, etc., Co. vs. U. S., 275 U. S. 464, probably has some bearing upon this controversy by way of contrast. In that case the *Mine Company had built its own private side track a distance of three and one-half miles to connect with the main line right-of-way of the Big Four Railway*, and certainly, under the provisions of Section 1 (9) of the Act, when a connection with the Big Four Railway was reasonably practicable and could be effected with safety, the Commission had authority to compel compliance with the Act. Likewise, if complainant here had built its track to connect directly with the right-

of-way of the Big Four at the northerly end of West 63rd Street in 1910 or any other time, the railroad, in the absence of a definite agreement or justifiable circumstances, would not be permitted to withdraw service to the siding at complainant's plant.

(k) On sheet 15 the third full paragraph is predicated upon a theory that there may be some question about complainant being a shipper. No such inference could be gleaned from the record. Complainant is certainly a shipper, but simply does not have a private side track so constructed as to be connected directly with the railroad right-of-way.

The statement that the Commission can require the operation of track 1619 for livestock upon reasonable terms, may be true, but the railroad defendants are at a loss to know how this could be accomplished. Unless this paragraph can be modified by specifying the manner in which the Commission believes the railroad defendants can carry out the order of the Commission, we believe this paragraph should be deleted.

Also, because of the misconception with reference to what
975 the parties concede in the third, fourth, and fifth lines from the bottom of this same paragraph, as to track 1619 being devoted to a public use, we believe the entire paragraph should be deleted. Assumptions are employed which are not supported in any manner by the record.

(l) On sheet 16, the Baltimore Butchers Livestock Company v. P. B. & W. Ry. Co., 20 I. C. C. 124, decided February 13, 1911, is discussed, and in the first full paragraph at the top of sheet 17 the following statement is made:

"Similar observations are warranted upon the facts of record here. *While the spur track in question there was owned entirely by the railroad, we do not consider this as having any legal significance in view of the operation and free maintenance of track 1619 here by the New York Central.*"

There is no justification for brushing aside or confusing the legal significance of the distinctions between the Baltimore Butchers Livestock Company case and the within complaint. The report shows that the Commission is aware of the fact that in the Baltimore case delivery of livestock to the industry's private sidetrack, which was connected directly with the carrier's main line track, and where there was no intervening private sidetrack or barrier such as exists in the within case, was arbitrarily discontinued by the railroad. The only reason for discontinuing the service was that the carrier and the Union Stock Yards had entered into an agreement in which the Stock Yards was designated as the exclusive point for delivery of all livestock entering Baltimore and the industry was compelled to accept delivery of livestock thereafter at the Union Stock Yards.

976 At page 137 of 20 I. C. C., the Commission said:

"the sole reason shown in the record for refusal on the part of the defendant to deliver livestock at complainant's yards was the alleged advantages to the general livestock market of Baltimore arising from the centralizing of the business, and the provisions in the contract with the Union Stock Yards Company in which it is agreed that the yard of that company should be the exclusive livestock depot."

In the instant case, there is not any similar contract. The railroad defendants are willing to deliver carload shipments of livestock to complainant's private sidetrack if the complainant will obtain from the Stock Yards Company permission to use the 1619 feet of Stock Yards track which intervenes between the New York Central's main tracks and complainant's industry or obtain its own direct connection.

The Baltimore Butchers Livestock case is not parallel with the instant case and all reference to it in the report should be deleted unless it is used as a contrast to the situation existing in the within controversy. In fact, the Commission should use the Baltimore case in support of a decision to dismiss the complaint in the within case.

(m) The second full paragraph on Sheet 17, giving the findings of the Commission, should be deleted, and the phraseology suggested for findings herein quoted in the last paragraph under Section V of this petition should be substituted therefor.

977 CONCLUSIONS

The main questions in this proceeding relate to (1) whether or not, in view of the long history and circumstances involved, the complainant is entitled to have the Commission order the railroad defendants or the New York Central to obtain for complainant, without cost to complainant, the use of the 1,619 feet of track owned by Stock Yards Company for delivery of livestock to complainant's plant, when said defendants have no ownership, control, or dominion over said track; (2) whether or not the Commission is empowered to issue such an order; (3) if so empowered, what steps can be taken to accomplish such results; (4) whether or not the Commission is empowered to exercise any such jurisdiction over the Stock Yards Company as will enable the Commission to compel the Stock Yards Company, which is not a common carrier, to extend the use of its 1,619 feet of track for the benefit of complainant, which the Stock Yards Company claims would be a financial detriment to its operations as a public stockyard. Stock Yards Company enjoys financial benefits from performing the services of unloading livestock through its stock

pens and yarding and storing the same, which benefits the Stock Yards would not enjoy if livestock is moved over its 1,619 feet of track to complainant's private sidetrack.

The decision of the Commission does not indicate by what authority it undertakes to require the New York Central to exercise a greater right in the 1,619 feet of Stock Yards track than it in law and fact possesses; nor does the order sufficiently enlighten the interested parties as to just what action could be taken to effectuate a solution of this controversy in keeping with the ideas of the Commission. The railroad defendants are left in a
978 dilemma as to just what should be done: They certainly cannot restore the service of delivering to complainant's private sidetrack complainant's interstate shipments of livestock consigned thereto and carried over railroad defendants' lines on or before August 30, 1946, by using the 1,619 feet of Stock Yards track; nor, are the railroad defendants able to establish and put in force, on or before August 30, 1946, a schedule or schedules providing for delivery to the sidetrack of complainant of its interstate shipments of livestock consigned thereto and carried over its lines, when said railroad defendants do not possess the right to use said 1,619 feet of Stock Yards track for such purpose. Moreover, said railroad defendants are prohibited by the owner of said 1,619 feet of track from so using it for complainant's benefit, or the benefit of any other shipper, in connection with shipments which are competitive with the business of said Stock Yards Company, except for compensation approximating charges for handling, storage and yardage which Stock Yards would collect if the livestock was unloaded through the Stock Yards pens.

In view of this impasse and the importance of this subject the Commission should reconsider its report and order and render a finding which is supported by facts and the principles of any applicable decisions. We urge this for the reason, among others, that it is apparent that the Commission omitted entirely, in its consideration of this novel controversy, any application whatsoever of the practices and customs prescribed by the Commission in Ex Parte 104. Certainly the Commission should avoid ordering any services which would be in violation of the practices prescribed in Ex Parte 104, or any other undue or unreasonable preferences or advantages.

979 In addition, the Commission should reconsider the omission from the decision of the cases of law which could possibly have any helpful bearing upon this controversy and the erroneous construction and application of the law contained in the report and order. The Commission has attempted to apply all of the more pertinent of the citations advanced by complainant, but its report does not reflect the principles announced in or the sig-

nificance of the more applicable decisions cited by railroad defendants. This is quite permissible, of course. However, the majority report gives quite a misleading impression as to the legal force of the railroad defendants' position and because of omitting any discussion of railroad defendants' citations of law there are indications that the Commission had put on "blinders" and "whizzed by" the law and argument presented by railroad defendants and placed strained construction on such law as was relied upon in the report in finding in favor of complainant. For instance, on sheets 9 and 10, the decision discusses Morgan Run Ry. Co. v. P. U. C., 120 N. E. 295, 98 O. S. 218, and the statement is made:

"The Supreme Court of Ohio had before it a situation closely analogous to that before us here."

and there follows an unsuccessful effort to fit the Morgan Run case into the controversy in this complaint. However, the statement is made in the Morgan Run case the short intermediate track was operated by the railroad under an agreement with the owner. The decision does not proceed to recite the fact that in the Morgan Run Ry. Co. case, the Burt heirs conveyed land to the Morgan Run Railway Company to construct, maintain, and operate a railroad or tracks, sidetracks, switches, etc., thereon and *the*

980 *Grantors reserved to themselves and their heirs and assigns, the same and equal opportunity and facilities for receiving and shipping of all kinds as are received by other persons, and the right to build a railroad or switch over the premises so conveyed to other premises owned by Grantors.*

John and Peter Ingham acquired the right of the Burt heirs in the land conveyed to the Morgan Run Railway Company and the agreement contained the above reservations. When the Inghams tried to sell their coal to parties other than R. B. Dennis (who was associated with the Morgan Run Coal and Mining Company and the Morgan Run Railway Company, which companies were owned by the same parties; and the same person was President of both Companies), at a higher price than Dennis would pay, the Morgan Run Railway Company refused to place cars for the Inghams, which was contrary to what it had been doing at the Ingham Mines when the coal was sold to Dennis. The Supreme Court simply held that as long as that Railway Company operates any portion of the railroad in question, it must do so without discrimination in favor of any shipper, including the Inghams.

Certainly this is not a situation parallel in any way to Swift's complaint. Where is there in this record any inkling of a contract which would entitle complainant to a perpetual right to use the 1,619 feet of track owned by the Stock Yards? Or, where is there

any such apparent collusion and discrimination as there was in the Morgan Run Ry. Co. case.

The Commission is not justified in laying such emphasis as it does upon the decision in the Morgan Run Ry. Co. case, an Ohio case which is not at all in point, and neglecting altogether
981 the illuminating decisions, including some of its own, advanced by defendants in their reply to exceptions of defendant dated September 25, 1945.

Failing to have such a contract as may have been present in the Morgan Run Ry. case, complainant then seeks to base its contention upon dedication to public use of the 1,619 feet of track owned by Stock Yards and the record fails miserably to support any ground of dedication to public service. The carefully guarded control retained by the Stock Yards over its 1,619 feet of track with complainant having full knowledge thereof at all times, certainly removes any basis for claiming dedication to public use.

The report and order of the Commission undertakes to apply the law in the following cases:

Guyton and Harrington Mule Co. vs. L. & N. R. Co., 50 I. C. C. 546, 550, on Sheet 7.

Union Lime Company vs. Chicago and N. W. Ry. Co., 233 U. S. 211, 221–222, on Sheet 9.

Morgan Run Ry. Co. vs. Public Utilities Commission, 120 N. E. 295, on Sheet 9.

Cleveland & etc. Ry. Co. vs. U. S. A., 275, U. S. 404, on Sheet 15; and

Baltimore Butchers' Livestock Co. vs. P. B. & W. R. R. Co., 20 I. C. C. 124, on Sheet 16.

Hereinbefore we have distinguished all of the above mentioned cases excepting the Union Lime Company case. The Union Lime Company case was a condemnation or eminent domain proceeding to obtain land for extending a private track under the provisions of Wisconsin Statute 1797–11M, which required every railroad to
982 acquire the necessary right of way and construct and operate a reasonably adequate and suitable spur track not more than three miles long etc. This case involved a state law and is not parallel with the within complaint because there is no comparable state law in Ohio. The only significance is that the Supreme Court said:

"While common carriers may not be compelled to make unreasonable outlays, it is competent for the state, acting within the sphere of its jurisdiction, to provide for an extension of their transportation facilities, *under reasonable conditions*."

Due to the fact that the decision is so definitely one-sided in its consideration of the law, a discussion of the applicable law which

ought to be determinative of this controversy is presented hereinbelow.

The report and order entirely ignores Limits Industrial Building Corp. et al. vs. B. & O. C. Terminal Co., 258 I. C. C. 438, discussed at page 27 of railroad defendants' Reply to Exceptions, dated September 25, 1945. The Commission in the Limits Industrial case found:

"Defendant's failure to continue freight service to and from an industry at Cicero, Ill., over certain switching and private industrial tracks previously constructed and in operation, and its refusal to operate over such tracks, under existing circumstances, not shown to be unlawful. Complaint dismissed."

The controversy in the Limits Industrial case and the decision in Greenlee Foundry Company vs. Borin Art Products Company, 379 Ill. 494, (which is part of the Limits Industrial case), is substantially similar to the within complaint. In the Limits Industrial case the B. & O. switch connected with the spur track of Limits under an agreement dated April 30, 1937 between the
983 B. & O. and Limits. Limits also regulated the right of use of its spur track by Borin Art Products Company. Limits owned that track beyond the B. & O. right-of-way. When the court enjoined the defendant, B. & O., from rendering any service over that track the complainant sought in the action before the I. C. C. to compel the rendering of the service. The B. & O. was willing to render such service if the legal obstacles were removed. At page 441 of the Limits case the Commission said:

"Common carrier services over private sidings and private industrial tracks cannot be expected, and certainly cannot be compelled, *where obstacles against the use thereof*, either legal or physical, *not caused by a carrier*, prevents it from entering upon those tracks. Nor is it within our jurisdiction to order a carrier, nor any other party, to take steps to remove such obstacles."

We are unable to understand why this case was not considered and discussed in the decision.

The Commission omitted any reference in its report and order to the court decision in the case of Bedford-Bowling Green Stone Co. vs. Oman et al., 134 Fed. 441, which was discussed at pages 34 and 43 in railroad defendants' Reply to Exceptions dated September 25, 1945. In that case (which was considered earlier in 115 Ky. 369, and was relied upon by complainant in its exceptions of August 1, 1945), the L. & N. Railroad sold its track which was built on the land of the Stone Company to the Stone Company and all rights which the railroad had in and to the track involved were terminated in that agreement. The court held that Oman, the third party who claimed he had the right to service

over the track owned by the railroad, had no property right or interest in any contract between the railroad company and
984 the owner of the land on which the track was located. That case, 134 Fed. 441, is interesting and gives the viewpoint of one court upon a situation which may be akin to the within case but is not urged as being analogous thereto.

Railroad defendants fully realize the unprecedented state of facts presented in the within case but believe that there is some reasonable guidance and help in the case of Sholl Bros. vs. Peoria & P. U. Ry. Co., 276 Ill. 267, 114 N. E. 529, which is based upon facts almost identical with the within complaint and which was discussed at length at pages 44–47 of railroad defendants' Reply to Exceptions of September 25, 1945. In that case Sholl Bros. in 1896 entered into a written agreement with the Peoria & Pekin Union Ry. Co. (hereinafter referred to as the Peoria) whereby the railway agreed to put in a sidetrack from its main track to Sholl Bros. coal mine about to be opened and operated by them. The contract between Sholl Bros. and the railroad provided that Sholl Bros. should furnish the right-of-way, grading and bridging from the main track to the mine, do all the grading and bridging necessary for the track at the mine and pay $300.00 as their portion of the first cost of the ties to be used in constructing such sidetrack. The railroad company agreed to furnish the balance of the track material and lay the sidetrack and necessary mine tracks and to maintain such tracks at its own expense, in return for which the railroad company was to have at all times exclusive use of said tracks and right-of-way. The railroad was also given the right to use said right-of-way and tracks in handling the business of or for the purpose of making connections with any other industry, *except coal mine*, that might thereafter be located adjacent to said right-of-way, provided said railway company:

"shall always do such other business in a manner which shall not interfere with Sholl Bros."

985 There were no industries other than the Sholl Bros. mine adjacent to, or reached by, this right-of-way at the time of its construction. However, before the track was laid a site for a state asylum for the insane had been chosen just beyond the land of Sholl Bros. and the asylum was established by the state on that site. The asylum commissioners built railway tracks on the asylum grounds and connected them with the track on Sholl Bros. land, after which the track on Sholl Bros. land was used for the transportation of freight to the asylum.

Sholl Bros. furnished coal to the asylum which was delivered over the track on its land and in some instances coal which was produced at some mine other than Sholl Bros. was delivered to the

asylum, but in each case of such delivery the Peoria requested and received the special permission of Sholl Bros. to move this latter coal over the Sholl Bros. track to the asylum. This practice continued uniformly until 1911 when Peoria issued a tariff showing a rate for the delivery of coal over Sholl Bros. tracks to the asylum and announced that such service was open to all persons who might demand it. Thereafter coal from the Wolschlag Copperative Coal Co. located on Peoria's railroad, was delivered over said t ack to the asylum. Whereupon Sholl Bros. filed court action and secured an injunction against the transportation over said track and right-of-way of coal not mined on their lands or under their coal rights.

In the trial Sholl Bros. contended that by the terms of the contract coal mines generally were excepted from the industries whose business the Peoria could handle over this track or make connections with, and that Peoria was precluded by the terms of the contract from transporting any coal over the track except
986. the coal from the mine of Sholl Bros. *The Court sustained this interpretation, not only upon the terms of the contract themselves, which the court found to be somewhat ambiguous, but mainly upon the construction of the parties themselves as shown by their acceptance, acts and other extrinsic circumstances.* The court affirmed judgment for Sholl Bros. upon the following grounds (p. 531):

"* * * *It must be remembered in this connection that the railway company does not own this right-of-way.* The fee in the land and right-of-way is owned by the defendants in error, *and the right of the railway company to use the tracks and right-of-way is restricted to whatever rights it has by the terms of the contract.*" [Italics ours.]

(p. 532):

"* * * *The sidetrack involved in this case is not a part of the public railway of plaintiff in error. It is connected with said railway, but not a part of it, and could not become a part of the railway system of plaintiff in error, unless* it be purchased or *acquired by condemnation proceedings.* As hereinbefore pointed out, the right-of-way on which the track was built is the private property of defendants in error, *and the right of the railway company therein is limited and governed by the provision of the contract that has been considered.*" [Italics ours.]

(p. 533):

"It would doubtless be of advantage to the state to be allowed to ship coal over this sidetrack to the asylum, but there is nothing in the circumstances of this case which gives the state any greater rights than an individual would have similarly situated."

Again in Fort Worth Stockyards Co. vs. Brown, 161 S. W.
987 (2d) 549, which was discussed at page 47 in railroad defendants' Reply to Exceptions dated September 25, 1945, the Stockyards Company sought to enjoin defendants from using its land. Stockyards had constructed an alley or driveway leading south from a public street to its pens. Defendants bought livestock from drivers on their way to plaintiff's pens, resulting in traffic congestion and loss of revenue to plaintiff. Defendants contended that the alley or driveway was a public thoroughfare and had been constantly so used by the general public with the knowledge and consent of plaintiff for more than thirty years. The injunction was denied and plaintiff appealed. The court said:

"Held: Defendants were never more than permittees. 'Granting to Defendants all the rights they may have acquired as such permittees on the premises, the permission given by Plaintiff, either expressed or implied, was subject to Plaintiff's revocation at its option,' p. 553. To create a prescriptive right the public use must be exclusive of the private uses of the owner. Use with permission of the owner will never ripen into prescription. Plaintiff's acquiescence in Defendant's use of its land would not preclude Plaintiff from determining who may and who may not transact business on its premises, this being true even though Plaintiff's business is of a public nature. Judgment for Plaintiff."

Railroad defendants are justified in feeling that in ignoring entirely the foregoing applicable law and other law cited and discussed in railroad defendant's Reply to Exceptions dated September 25, 1945, that the CCommission has not accorded this subject the fair treatment it deserves.

Railroad defendants also feel that the law pertaining to
988 to dedication to a public use, recited in the Reply to Exceptions dated September 25, 1945, beginning at page 49, and particularly the cases beginning with Irwin vs. Dixon, et al., 9 Howard (U. S.) 10, 13 L. ed, 25, on page 53 thereof, and continuing through to and including the case of Rochex & Rochex vs. Southern Pacific R. Co., 128 Calif. App. 474, 17 P. (2d) 794 (1932) at page 68, should have been considered and discussed. Particularly do we suggest that the report and order embrace a discussion of the law of dedication to public use because on sheet 3 the Commission inconsistently and incorrectly says:

"Portions of the spur from the main line to complainant's siding were dedicated to public use by various easements conveyed to the railroad by the Stock Yards, complainant, and others."

While it is true that two hearings have been held and this subject has been argued before the Commission twice, it is also true that the examiners who conducted both hearings unanimously proposed reports which correctly portrayed the facts and circumstances involved and made proper recommendations to dismiss the complaint based upon such applicable law as was available and the circumstances involved.

Also, we are still mindful of the statement made by complainant on page 35 of its Exceptions to Report proposed by Paul O. Carter, Examiner, dated April 30, 1943, reading as folows:

"We have searched the decisions of the Commission without finding a case involving a state of facts exactly similar."

We believe that statement is correct; it is just as correct today as the day complainant's counsel uttered it, and in view of the
989 erroneous analysis of the law made in the report and order and the unwarranted and unsupported assumptions used as a basis for discussing this novel question which is of such an important nature, certainly a reconsideration, reargument and modification of the report and order is warranted.

We submit that there is no provision in the term "railroad" contained in Section 1 (3) (a) of the Interstate Commerce Act to the effect that private property used by one carrier under contract for limited purposes thereby becomes a railroad for unlimited use without agreement, condemnation or dedication.

Complainant cannot in good faith claim that any tariff provision misled it in connection with the limited use of the 1,619 feet of track owned by the Stock Yards Company under the provisions of Section 1 (6) of the Act, nor has complainant produced any facts or history of any kind which indicate a violation of Section 1 (9) of the Act. In fact, complainant has not shown that it has constructed a sidetrack to connect with railroad defendants' railroad as the term "railroad" is defined in the Act. Complainant is simply seeking to obtain an undue and unreasonable preference and advantage which is not accorded or required to be accorded to other shippers.

Wherefore, said railroad defendants pray that the Commission stay the effective date of the order until the further order of the Commission, pending the decision of the Commission with respect to this petition; that said proceeding be reopened for reconsideration, and reargument upon the record before the Commission; and that, after such reconsideration, the complaint be dismissed or the
findings in the report and order of May 3, 1946, be modified
990 as hereinabove requested; and that such other report and findings be made as the Commission may consider proper in the premises.

Oral argument is respectfully requested.
Respectfully submitted.

HAROLD H. MCLEAN,
LEO P. DAY,
KEMPER A. DOBBINS,
M. B. & H. H. JOHNSON,
WILLIS T. PIERSON,
DWIGHT B. BUSS,
G. H. P. LACEY,
ROBERT R. PIERCE,
Counsel for Railroad Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing petition upon all parties of record in this proceeding by mailing by first class mail a copy thereof to each party.

Dated at Cleveland, Ohio, this 2nd day of August 1946.

ROBERT R. PIERCE,
1324 West Third St., Cleveland 13, Ohio,
Of Counsel for Railroad Defendants.

994 Before the Interstate Commerce Commission

Dkt. No. 28714

SWIFT & COMPANY
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

Complainant's answer to railroad defendants' petition for reconsideration, reargument, and modification of findings

INTRODUCTORY STATEMENT

Because of the repetitious method adopted in preparing the petition, it is difficult to reply in an orderly and logical manner. We gain the impression that everything in the decision, with the exception of the caption, is wrong. To use the exact language of the petition (p. 35, first par.) "the Commission had put on blinders and 'whizzed by' the law." We participated in the argument in this case, have appeared in several others, and have not yet
995 had the unusual experience of watching this sequence. We should enjoy being present with a fast camera.

We do gather that (in the opinion of counsel for defendants) this decision, which effects a simple act of justice, will have amazing and as yet immeasurable results. Perhaps it is hardly

overstating the general tenor of the petition to say that (in the opinion of counsel for defendants) this decision is probably causing the present difficulties in the Peace Conference, may seriously dislocate the efforts of the United Nations, result in devastation akin to that of the atomic bomb, and at the least wreak punishment upon an "innocent and helpless victim" (Petition, p. 15).

In the reply that follows we have discussed certain of the major points conjured up by defendants. Each one of these contentions is mentioned initially on some page of the petition and then repeated disconnectedly at other places throughout the petition. We consider that a single answer on each of these points is adequate and therefore shall not follow the style of the petition by repeatedly saying the same thing. We indulge the assumption (apparently not shared by defendants), that a single statement of a proposition is sufficient for the Commission.

THE PETITION RAISES A DOUBT AS TO WHAT IS BEING TRIED IN THIS CASE

We believe it is a moderate statement to say that the language used in defendants' petition goes beyond traditional bounds. We summarize a few of the statements made.

996 "Our amazement is further increased," say petitioners, because the Commission overruled the reports proposed by the tree different Examiners. The Commission "assumes facts," say defendants on page 3 of their petition, and "completely and unjustifiably ignores the facts and applicable decisions." On the same page defendants say that the conclusions are "unsupported by any evidence in the record or any applicable law or any fair interpretation thereof." The Commission, according to defendants (page 5, paragraph (12)), "strained throughout its report to nullify and circumvent" a certain fact. According to defendants (page 9, paragraph 3), the report is based upon "contradictions and inconsistencies." At page 11, paragraph 2 we find that the decision was based upon "uncertainty and doubt" in the minds of the Commission. Similarly in the last paragraph on page 12 defendants state that certain findings of the Commission are "misleading, unrealistic." According to the petition (at page 16) the Commission adopted an "unrealistic and confused approach to the facts" and "strains to give it (a certain fact) no effect." According to the petition (on the same page) the Commission "misstated facts." Again at the bottom of page 19 we are told that the Commission "strains" to reach a certain conclusion. The petition informs us (page 35, first paragraph) that "the Commission had put on 'blinders' and 'whizzed by' the law" in reaching its decision.

Perhaps the phrases so far quoted and other similar lan-
997 guage may be condoned as merely an overzealous statement by counsel; but the following paragraph (quoted from page 13 of the petition) appears to be a direct attack upon the intellectual integrity of the Commission:

"When the issue in any case is not stated in an impartial and complete manner, it is practically a foregone conclusion that the ruling on the issue will be erroneous—as it proves to be in this case. We respectfully submit that the manner in which the issue in this case is stated at the outset, on Sheet 7, in and of itself condemns this report. It does not state the true issue at all, but apparently reflects a fancied determination to spell out a case for complainant."

The innuendo is plain.

Of course, there is no fair ground of attack upon a decision (see petition, p. 2) that the Commission failed to agree with the reports of the Examiners who heard the case. That often happens and is the very reason why exceptions and argument based upon the proposed report of the Examiners are a part of the Commission's procedure.

THIS CASE HAS HAD AN UNUSUAL DEGREE OF ATTENTION BY THIS COMMISSION

The history of this case shows that it has had very thorough consideration by the Commission. It is unlikely that the errors alleged crept into it, that the Commission has put on "blinders," or that it has misstated any essential fact.

The complaint was filed in September 1941. It came
998 on for hearing at Cleveland, Ohio, April 22, 1942 before Examiner Paul O. Carter. A proposed report was issued by Examiner Carter in April, 1943. Oral argument was had before the entire Commission on June 4, 1943. By order of the Commission (on its own motion) of June 14, 1943, the case was reopened for further hearing and was heard at Cleveland, Ohio, on June 22, 1944, before Examiner T. Leo Haden. Further briefs were filed in October 1944. In May 1945, a proposed report was issued by the Examiners. Exceptions to this report were filed by the complainant on August 1, 1945. The case was again argued before the entire Commission on October 3, 1945. The case was not decided by the Commission until May 3, 1946. Thus, seven months intervened between the second oral argument and the decision.

A further fact not without importance in this connection is that there was a division of opinion in the Commission. Six commissioners concurred in the majority opinion, three dissented, and one

commissioner did not participate. It is only fair to deduce that, where two separate proposed reports have been made by different Examiners, where there have been two oral arguments before the entire Commission, and where there is a division of opinion in the Commission, the case must have been considered very seriously after its submission upon oral argument. It is not likely under such circumstances that erroneous statements of fact crept into the majority decision, that the issues were stated in a partial
999. or incomplete manner, that the true issue was not stated at all, or that the majority opinion reflected a "fancied determination to spell out" a certain conclusion. The dissenting opinions are not based upon any such innuendo concerning the good faith and integrity of the majority, but solely upon different conclusions on questions of law, a kind of division which frequently occurs in such a high tribunal as the United States Supreme Court.

There is a tradition that Abraham Lincoln said that every lawyer who lost a case had a right to "cuss the Court" but that this should be done at the tavern in the evening. Here it seems doubtful whether defendants are trying the case or trying the Commission.

THE FUNDAMENTAL PROVISIONS OF LAW UPON WHICH THE DECISION RESTS ARE NOT DISCUSSED IN THE PETITION

In the 46 pages of printed matter contained in the petition the defendants do not discuss the single provision of law which is fundamental in this case and upon which the decision of the Commission rests. We refer to the definition of the word "railroad" in section 1 (3) (a) of the act, the pertinent portion of which is quoted in the second paragraph on sheet 2 of the mimeographed copy of the decision. Section 1 (3) (a) provides that the term "railroad" shall include "* * * all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind." etc. The
1000 same section further defines "transportation" as including "all instrumentalities and facilities of shipment or carriage irrespective of ownership, or of any contract, express or implied, for the use thereof," etc.

The evidence shows and the Commission finds that track 1619 has been operated by the New York Central for more than thirty years. As we understand the record (see decision sheet 3, second paragraph) the track was laid by the railroad without compensation by the yards. The statute makes no distinction as to whether the track is owned in fee by the railroad or operated under a contract, agreement, or lease. Certainly it cannot be denied that track 1619 has been operated by the New York Central

under a contract, agreement, or lease since 1910. All of the contracts and agreements under which the railroad has operated the track are a part of the record and are summarized in the decision. This being so, track 1619 became a part of the railroad under section 1 (3) (a) and it thereupon became the duty of the New York Central to operate this part of its railroad as well as all other parts in conformity with the terms of the Interstate Commerce Act. The New York Central could not in respect to this part of its railroad indulge in preferences, discriminations, concessions, or other violations of law, any more than in connection with its main line spur tracks owned in fee.

It is strange that this provision of law and the Commission's findings thereunder should not have been discussed in the
1001 petition for rehearing. It is fundamental and all other conclusions in the decision stem from it. If the Commission was correct in finding that track 1619 became a part of the New York Central Railroad and of its terminal facilities, then no other part of the decision is open to debate. If the Commission erred in that connection, the complaint should have been dismissed. Yet this specific point is not argued in the petition.

THE QUESTION OF DISCRIMINATION NECESSARILY DEPENDS UPON THE LEGAL CONCLUSIONS UNDER SECTION 1 (3) (A)

In refusing to deliver carloads of livestock to the Swift plant while contemporaneously making deliveries to the private sidetracks of complainant's competitors, Lake Erie Provision Company, Long Dressed Beef Company, and Ohio Provision Company, the Commission held that the railroad defendants were violating the antidiscrimination provisions of section 3 (1) of the act.

This finding of the Commission is alleged to be erroneous in section IV of the petition, page 16, and at other places throughout the petition. It necessarily follows that this finding as to discrimination was correct if the Commission was correct in finding that track 1619 had become a part of the New York Central Cleveland terminals under section 1 (3) (a) of the act. The evidence that carload shipments of livestock were being deliverd to the sidetracks of the Lake Erie Provision Company, Long Dressed Beef Company, and Ohio Provision Company was not disputed.

But the railroad attempts to justify that delivery upon the
1002 ground that each of said industries has a sidetrack connecting directly with the New York Central main line, no part of which is owned by the stockyards. When, however, the Commission holds as it rightfully did that track 1619 has also become a part of the New York Central Railroad and of its terminal system by reason of the operation of that track under contract, agreement,

or lease by the New York Central for over thirty years, then the position of the Swift plant becomes exactly the same as that of the three other plants mentioned. Each is located upon a sidetrack of the New York Central and the situation is such that each is entitled to the same service as each of the others with respect to delivery of livestock or any other freight. The three deliveries to complainant's competitors can no longer be distinguished from the delivery to the Swift plant because the history of the track and the provisions of the law have made track 1619 a part of the New York terminal system in connection with which it may not discriminate to the damage of one plant and in favor of three others engaged in the same business located upon the terminal tracks of the same railroad and in all other respects entitled to equal treatment.

THE MYTH OF EX PARTE 104

For the first time in this proceeding, and after it has been before the Commission nearly five years, the defendants raise the point (page 3, paragraphs 2 and 3 and at other pages in the petition) that the order of the Commission in this case would bring about

1003 a violation of the principles announced in Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, and the decision of the Supreme Court which sustained the decision of the Commission in United States v. American S. & T. Plate Co., 301 U. S. 802, 81 L. ed. 1186.

Counsel must have been hard pressed to find some ground for asking reopening in order to reach the point where they were willing to make these categorical statements concerning Ex Parte 104. If there has been any possibility that granting the prayer of the complaint would have involved a violation of the principles there stated, there were two hearings and two oral arguments before the entire Commission in which this issue could have been raised, and yet we find it first stated in a petition for reconsideration after the final decision of the case.

The fallacy of defendants' assertion, however, does not rest upon the mere lack of diligence of counsel in presenting the issue. As applied to the situation at Cleveland, the statements in defendants' petition are purely a myth.

The Commission well knows that the original decision in Ex Parte 104, and the later decisions therein dealing with specific industries had to do, almost without exception, with cases where industries had an immense track layout within their plant and where cars were delivered to or received from the industry upon an interchange track. In almost all such instances the cars were placed upon the interchange track by the railroad and switched

from such interchange track to the desired point within the
1004 industry by motive power owned by the industry; and generally the railroad made an allowance to the industry for this switching by the industry within its plant and beyond the interchange track.

No such situation exists at the Swift plant at Cleveland. The Swift plant at Cleveland has no tracks which are literally within the plant. It owns no engine with which it performs switching for the plant or otherwise. Reference to Exhibits 12 and 13 of the record in this case shows a very simple track lay-out, with one track running to the rear of the Swift plant and another parallel track which at times serves the Swift plant, but also, under an easement granted by Swift, is used to serve plants to the north of the Swift plant, including Hughes Provision Company, Kohlberger Company, and Theurer-Norton Provision Company. Only a limited number of cars can be accommodated upon the sidetracks adjacent to the Swift plant. The switching service is performed in all instances by a simple switch movement at the carrier's convenience. These facts are also known to the Examiners by reason of a visual inspection of the track lay-out, made by them in company with counsel for defendants, upon invitation of complainant.

The plain fact is that, if any Ex Parte 104 situation is brought about by the order in this case, it already existed with respect to all dead freight switched to the Swift plant and with respect to all dead freight switched to the seven other industries served by track
1619; with respect to the three packing companies located
1005 north of the stockyards, and indeed with respect to all other industries in Cleveland which do not perform their own internal switching service but have simple sidetrack deliveries.

But finally, this assertion on the part of defendants indicates an almost incredible lack of knowledge as to what has actually happened in this connection. The defendant carriers filed with the Commission, effective November 1, 1945, a tariff known as W. S. Curlett, I. C. C. No. A–833. This tariff was suspended for a period but became effective January 1, 1946. The purpose of the tariff was to publish the general rules respecting deliveries which had been announced by the Commission in the various Ex Parte 104 decisions. This tariff applies at all points throughout official classification territory, including Cleveland. It is understood that it had the informal approval of the Commission as being appropriately phrased for the purpose of giving effect generally to the Commission's decisions under Ex Parte 104. This tariff applies to every sidetrack delivery of every carload of freight in the city of Cleveland, including all deliveries to complainant's plant, whether it be dead freight or livestock. It cannot be denied that, regard-

less of the fact that the deliveries to the Swift plant did not present any situation coming within Ex Parte 104, nevertheless, if in the imagination of defendants' counsel such a situation could have existed, it was ended by publication of the tariff to which we have referred.

1006 The fact that this tariff was published and has been applicable at Cleveland since January 1, 1946, is not mentioned in that part of defendants' petition relating to Ex Parte 104 or elsewhere.

This tariff provides, amongst other things, that cars shall be delivered at carriers' ordinary operating convenience in a continuous movement; provides a charge of $1.00 for each five minutes in excess of thirty minutes where the locomotive is delayed in placing cars through fault of the shipper; and where delivery is delayed because the car is placed on a hold track the subsequent movement of the car for delivery to the industry track will be subject to a charge of $3.47 per car. The recent decision in the Corn Products Refining Co. case (decided July 1, 1946, not yet reported), shows that the Commission considered that said tariff gave effect to the principles of Ex Parte 104.

It is perhaps an understatement, under these circumstances, to say that we admire the audacity of our opponents in raising the point after the situation had been covered by an effective tariff applicable to the Swift plant and all other plants at Cleveland prior to the decision in this case.

THE NEW YORK CENTRAL IS NOT WITHOUT POWER TO OBEY THE ORDER

On page 6 of the petition and at many other points therein it is stated in effect that the New York Central cannot comply with the order.

1007 A short answer to this proposition might be that all the New York Central needs to do is to add a carload of livestock to the other cars which are being moved over track 1619 in a particular switch movement and deliver it at the Swift plant. It is certainly no more difficult to do this than to deliver a car of salt, lumber, or coal.

The New York Central, however, apparently bases this argument upon the proposition that the stockyards may refuse to permit the New York Central to move the car of livestock over track 1619. Let us anticipate what might then happen.

The stockyards company was made a defendant in this proceeding under section 2 of the Elkins Act, 49 U. S. C. A. Sec. 42. This fact is stated in the last paragraph on sheet 2 of the mimeographed copy of the decision and section 42 is quoted in the footnote. The Commission holds that under the conditions here presented the

stockyards is a proper party defendant in this proceeding under said section. Let it be noted also that the order of the Commission attached to the decision runs not only against the New York Central Railroad and the other railroad defendants but also against The Cleveland Union Stock Yards Company.

We question whether the stockyard company under these conditions will be advised by competent counsel to take the risk of disobeying the order of the Commission.

This order is made under section 15 of the Interstate Commerce Act. Section 16 (8) provides that for a violation of an
1008 order made under section 15 any officer or agent of the *carrier who knowingly fails and neglects to obey such order* shall forfeit to the United States the sum of $5,000 for each offense, that every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

It may be argued that this penalty would run against the railroad only and would not compel action on the part of the stockyards because the stockyards is not a carrier or the agent of a carrier. We believe the stockyards is an agent of the carrier in connection with the loading and unloading of livestock. But that point is immaterial in this connection. 18 U. S. C. A. 550 reads as follows:

"(Criminal Code, section 332.) 'Principals' defined. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (R. S. § § 5323, 5427; Mar. 4, 1909, c. 321, § 332, 35 Stat. 1152.)"

Under this provision of the criminal code, if the stockyards should aid, abet, or induce a violation of the order, it would become a principal and would be subject to the same penalty as the railroad for violation of an order. Indeed, this very section of the criminal code has been used by the Commission in many prosecutions, especially under the Motor Carrier Act, in order to bring in as defendants and obtain the imposition of penalties upon parties who were not carriers. Thus, we see that the New York Central may comply with the order merely by pulling a carload
of livestock to the Swift plant along with a carload of
1009 lumber; and that, if the stockyards should attempt to prevent such action by the New York Central, under compulsion of an order of the Commission, the stockyards would be liable for severe penalties.

If either the New York Central or the stockyards believes that the Commission has committed an error of law in the conclusion stated in its decision, and in the entry of the order, they have a remedy which involves no penalty. The parties defendant may

file in the proper United States District Court a petition seeking to have the order enjoined and, in the event such petition should be denied by the District Court, an appeal lies direct to the United States Supreme Court.

It is believed that what has been said is a sufficient answer to the statements made so often throughout the petition to the effect that the New York Central is unable to comply with the order entered in this case.

THE PROPOSITION THAT DEFENDANTS SHOULD BE PERMITTED TO VIOLATE THE INTERSTATE COMMERCE ACT BECAUSE COMPLAINANT FORMERLY OWNED 9⅓% OF THE STOCK OF THE CLEVELAND UNION STOCK YARDS

Defendants seem earnestly to contend (petition, page 4, paragraph 5) that Swift is not entitled to the reasonable services, rates, deliveries, etc., required by law and that the New York Central may violate its present tariff[1] with respect to deliveries to the Swift plant, because in the language of the petition the decision "ignores entirely the uncontradicted early history and circumstances, including the history of the relationship between the complainant and the stock yards company."

The proposition is on its face preposterous but, since it is made, we reply.

1. The cases cited by defendants are not in point. Swift & Company v. Alton R. Co., 238 I. C. C. 179, and Swift & Company v. United States, 316 U. S. 216, 86 L. ed. 1391, involved no question as to whether a railroad carrier might violate its published schedule or refuse customary deliveries on industry sidetracks. The only question involved in those cases was whether the consignee of carloads of livestock shipped to a public stockyards, after unloading from the railroad cars into the pens of the public stockyards, could demand egress from the stockyards' pens over the property of the stockyards without payment of yardage charges to the stockyards. The court held that the consignee could not avoid payment of the yardage charges. The same conclusion was reached as to deliveries of livestock consigned to the Cleveland Union Stock Yards in Baltimore & O. R. Co. v. Cleveland Union Stock Yards Co., 255 I. C. C. 579. This conclusion was not upon the ground suggested by defendants but solely upon the ground of jurisdiction. The Commission said (page 592):

"Upon the facts of the record, we find that the services performed in the past by the Stockyards Company and
1011 now performed by the Service Company, and the facilities

[1] The Commission finds, sheet 6, mimeographed report: "No similar cancellation was made, however, as to rates on shipments of livestock billed to complainant's siding for movement in line-haul service over the New York Central to Cleveland. On such traffic the tariffs of that carrier provided, and still provide, for delivery to complainant's siding at the line-haul rates to Cleveland."

furnished, beyond the unloading pens, are services and facilities which are not subject to our jurisdiction."

In the present case we are dealing with railroad facilities over which the Commission has exclusive jurisdiction and not with pens of public stockyards over which the Commission has disclaimed jurisdiction.

2. The petition states, page 4, paragraph (5), that the decision "ignores entirely" the former relationship between complainant and the stockyards. The shocking error in this statement is apparent when it is noted that an entire paragraph of the decision (second paragraph, sheet 7, mimeographed copy) is devoted to relating the pertinent facts in this connection. It can hardly be argued that the Commission has ignored entirely, fractionally, or in any other degree, facts which it has stated in its decision. If the facts need be stated more fully than they are in the decision, which we doubt, they appear at page 238 of the transcript as follows:

"At the request of counsel for defendants, the following stipulation was agreed to and filed of record as exhibit 49 (t. 238):

'Stipulation.

'Testimony of Mr. Pearson F. Marsh, Special Agent of the Interstate Commerce Commission, in Ex Parte No. 127 hearing, July, 1939, in which he stated (R. 824–825, Ex Parte 127):

"In 1916, Swift & Company purchased 1,000 shares of $100 par stock (voting) of The Cleveland Union Stock Yards
1012 Company for $100,000. In 1922, Swift & Company received a stock dividend of 60 per cent—an additional 600 shares. In 1924, Swift & Company sold 300 shares after which its holdings were 1,300 shares or approximately 6½ per cent of the total 200,000 shares then outstanding. In 1928, in connection with the reorganization of The Cleveland Union Stock Yards Company, Swift & Company turned in its 1,300 $100 par shares and received in exchange 5,200 shares of new no-par stock. In 1933, Swift & Company sold 237 shares, and in March 1936, sold its remaining interest of 4,963 shares. Since that date, Swift & Company has had no interest in The Cleveland Union Stock Yards Company."

'Swift & Company disposed of its shareholdings pursuant to an order dated February 27, 1920, issued by the Supreme Court of the District of Columbia in Equity Case 37623, entitled United States of America, petitioner, v. Swift & Company, et al., defendants. On January 31, 1931, Swift & Company was ordered to divest itself of ownership in public stockyard market companies and stockyard terminal railroads on or before January 31, 1932, and

asked for an extension of time in which to dispose of its interest and by an entry filed in this Equity Case No. 37623, on February 8, 1936, Swift & Company reported disposing of 4,963 shares of the capital stock of the Cleveland Union Stock Yards Company to John DeWitt, which sale was confirmed.'"

It will be noted that the statement in the Commission's decision is merely a short statement of the facts of record.

1013 Thus it appears, and the Commission finds, that for a period of years Swift owned about 6½ per cent of the stock of the Cleveland Union Stock Yards. It could not even be suggested that such a minority holding of stock in that company was unlawful. But aside from that, let us examine for a moment the novel and irrational propositions involved in this contention of defendants:

(a) Swift once owned 6½ per cent of the stock of the Cleveland Union Stock Yards.

(b) The New York Central publishes a rate of 89 cents cwt. on fresh meats in carloads from Chicago to New York.

(c) For the reason stated in (a) the New York Central may charge Swift 10 cents per hundred pounds or any other amount above its published tariff rate.

(d) The New York Central may refuse to accept a car of meat from Swift at its sidetrack in Chicago and refuse to deliver a car upon a Swift sidetrack in New York.

(e) Swift is not entitled to equal treatment with other shippers in Cleveland or elsewhere.

(f) The New York Central need not accept a carload of live stock at Indianapolis for delivery at the Swift plant in Cleveland, in violation of its published tariff.

The logical end of the argument of defendants would be that anyone who had ever held stock in a corporation *ipso facto* and forever after is denied all protection under the civil and criminal laws of the United States. Surely we need not discuss such a legal mirage.

1014 GENERAL STATEMENT AS TO FORM OF REPLY

We believe that under specified title headings we have given a complete reply to the principal criticism offered by defendants in their petition. It is difficult to answer the petition in an orderly manner because substantially the same allegations of error are intermingled throughout the entire petition and as a result are often stated four or five times; whereas we believe logical presentation would have required that each alleged error be stated once together with reference to the facts of record or to the law which supports it. Since this form of presentation has not been

followed in the petition, we find ourselves in this position. We do not desire to repeat in this reply what has been said as to the principal points urged by defendants in connection with each of the pages of the petition on which a statement is repeated. On the other hand, we do not wish that silence be treated as an admission or acquiescence where a point is repetitiously stated. Therefore, in addition to the specific points under the several prior headings herein, we refer briefly to various repetitious statements.

VARIOUS STATEMENTS IN DEFENDANTS' PETITION

Defendants state (at page 5) that complainant is now asserting that track 1619 is a public spur in which complainant has acquired a vested interest. The exact contrary is true. Swift has and asserts no interest in the track, vested or otherwise.
1015 The New York Central, however, has gained an interest in the track because it has been operated as a part of the New York Central terminal system for many years under a contract, agreement, or lease, and has become a part of its terminal facilities in Cleveland which are subject to the provisions of law.

Petitioners state that the Commission lacks the power to subject the property of the stockyards to use for the benefit of complainant or the railroad. The short answer to this proposition is that the Commission is doing nothing of the kind. The track in question has been devoted to the use of the railroad over many years by voluntary agreement between the railroad and the owner and not by compulsion of any public power.

Petitioners urge in the paragraph commencing at the bottom of page 5 of the petition that the Commission is inconsistent in acknowledging that the yards company may withdraw its tracks from use altogether but cannot lawfully limit its use, a proposition which, say defendants, "flies in the teeth of common sense." There is nothing novel about this proposition. Many small railroads have been abandoned in toto because they could not earn operating expenses, but so long as they are operated they have to conform to the terms of existing law. A complete answer to this argument is found in Ayres Mercantile Co. v. Union Pacific R. Co., 16 F. (2nd) 395, quoted at p. 80 of our exceptions dated August 1, 1945.

So many similar illustrations could be cited that we will
1016 suggest only one more. A man might grant an easement over his land for the purpose of erecting telephone poles and stringing wires thereon, and perhaps at a later time cancel and withdraw the easement. Nevertheless, while he permitted the use of his land to carry the wires of the telephone company, he

could not say to the telephone company that it shall not put a telephone in the home of one John Smith or that Smith must pay for the easement granted the public utility.

Two paragraphs on page 6 of the petition are devoted to a contention that the order in this case cannot be carried into effect. That point has already been covered. See page 13 herein.

The contention as to lack of ownership, dominion, or control over track 1619 stated at the bottom of page 8 of the petition is answered herein in the chapter commencing on page 6 herein.

The defendants say (second paragraph, page 9) that the order in this case would cause undue and unreasonable preferences and advantage to complainant which are not afforded to shippers generally and would supply a superior service to complainant not accorded to shippers generally. For transparent reasons defendants do not elaborate on this point or state any facts to support it. Under the order the complainant would receive only the same kind of delivery of carload shipments of livestock that is accorded by the New York Central to three of complainant's competitors not
1017 more than three city blocks from its plant, the same service and delivery of carloads of livestock that under defendants' tariffs are open to any other shipper in the Cleveland district; and the same type of service that under defendants' tariffs is accorded to all dead freight reaching the city of Cleveland, whether consigned to the plant of complainant, to another plant in the stockyards district, or to any other industry within the Cleveland switching limits.

We find the difficulty of compliance with the order repeated in various forms on pages 10–12 of the petition, but it is unnecessary to advert again to that proposition.

The petition states on page 13, first paragraph, that the Commission has stated the issue "in a manner which begs the question and makes the answer in complainant's favor a foregone conclusion." No comment upon this criticism of the Commission is necessary.

In the last paragraph on page 14 of the petition the railroads again advert to the former ownership by Swift of the small block of stock of the Cleveland Union Stock Yards. While this point is without merit, it has been answered in the chapter at page 16 herein.

The defendants urge (page 15 of the petition, second paragraph) that the New York Central should not be "penalized" and should not become "an innocent and helpless victim" of this contest between the complainant and the stockyards company. It is difficult to imagine how the New York Central would be penalized.
1018 It is ordered to give the ordinary sidetrack delivery that it now provides upon all classes of dead freight in Cleveland to all industries and upon livestock itself to all industries other

than that of complainant. For these services, under the reciprocal switching agreement, it is assumed that the New York Central and the other lines are compensated in the rates to Cleveland.

As to the suggestion, if it is intended, that the New York Central is entirely at the mercy of the stockyards, that point is fully covered in the decision of the Commission commencing with the last paragraph on sheet 11 of the mimeographed copy and continuing to the end of the third paragraph on sheet 12. The Commission reaches the conclusion that penalty charges may not lawfully be assessed by the stockyards against the railroad. Unless some court should later hold otherwise, it is obvious that the New York Central is not penalized and does not become an "innocent and helpless victim," nor even a refugee either from the standpoint of the services rendered or by any charges that may be imposed upon it.

The petition states in section IV, page 16, that the finding of the Commission of a violation of section 3 (1) is based upon "misstated facts." This proposition has already been answered herein on page 3 and we will not restate what was there said. It may be noted, however, that none of the decisions cited by defendants on page 19 of their petition supports the proposition here urged by them. Defendants apparently have not yet heard of the
1019 provisions of law enacted in 1887 to the effect that shippers similarly situated shall be given similar and equal treatment. That is the rule which the Commission proposes to enforce. None of the cited decisions violates this principle.

The defendants assert (petition, pages 20, 22) that the Commission has "assumed certain facts" which are "absolutely at variance with the record and therefore reached erroneous conclusions." It is very unlikely that this could have happened in a case which has had the extended consideration mentioned at page 4 herein. The facts stated in the majority report are exactly those stated in the reports of the Examiners with which the defendants appear to be entirely satisfied. If those facts are at variance with the facts of record (and they are not), that point should have been called to the attention of the Commission by exceptions to the proposed report of the Examiners. To save time we merely point out that the alleged facts set forth in paragraph (1) on page 20 of the petition appear fully in the third and fourth paragraphs, sheet 4, and on sheet 13 of the mimeographed copy of the decision.

With respect to paragraph (2) page 20, there is no finding in the decision of any collusion between the complainant and the stockyards company and none could have been made.

With respect to paragraph (3), same page, the Commission has pointed out (sheets 11–12) that the stockyards may not exact a penalty from the New York Central.

1020 It is suggested in paragraph (4), page 20, of the petition that the decision is intended to afford complainant an opportunity to build additional unloading chutes and facilities which have not been in existence in the past. The situation in this respect is fully summarized in the second paragraph on sheet 5 of the decision. So far as complainant is concerned, nothing could have been more idiotic than spending its money in the building of additional unloading pens during a period when it was denied the right to have livestock delivered at such pens. Again in paragraphs (5), (6), (7), and (8) it is stated that the decision would result in undue preferences and advantages to complainant. We have already pointed out that the order would result in giving complainant only the same service that is accorded to all other receivers of livestock and all other receivers of dead freight in the city of Cleveland and, therefore, do not elaborate further on that point.

We may pass by without comment the statements under section VI on pages 22–29, inclusive, because they are mere categorical declarations not supported by anything in the record, or the decided cases, and it would make no difference in the conclusion if certain of the slight changes in findings there suggested were inserted in the decision. We deny, however, that the suggested changes are warranted.

Coming to page 29 defendants state that reference to the decision in Guyton & Harrington Mule Co. v. L. & N. R. R. Co., 50
1021 I. C. C. 546, should be deleted because it has no similarity to the present case. The holding in that case which was relied upon by the Commission was that so long as a carrier by tariff provides for a specific delivery, it must make that delivery. The Commission has found (see page 16 herein) that the New York Central tariff still provides for the delivery here sought. Certainly, in this respect the Guyton & Harrington Mule case is not only in point but is controlling.

The next suggestion of defendants (page 29) is that the Commission delete from its report all of the matter commencing with the second full paragraph on sheet 9 and extending to the end of sheet 14. Such a suggestion needs hardly any comment. If controlling facts and a discussion of the law are to be taken out of a decision, preparation of a decision is a mere futility.

Defendants also state on pages 29 and 30 that the Commission should withdraw its reference to the decisions in United States v. B. & O. S. W. R. R. Co., 226 U. S. 14, 57 L. ed. 104, and Cleveland, etc., Co. v. United States, 275 U. S. 404, 72 L. ed. 338. Those decisions are used merely to state the power conferred upon the Commission by section 1 (9). They are therefore relevant in a decision dealing with the powers of the Commission under that section.

Defendants make an assertion on page 30 of their petition which we had hardly expected from the learned counsel who tried this case and wrote the petition. It is in the second paragraph and reads as follows:

"Complainant * * * does not have a private side
1022 track so constructed as to be connected directly with the railroad right-of-way."

This is a plain misstatement of fact. Exhibits 12 and 13 show that complainant's sidetrack *connects directly with tracks of the New York Central*, not with the stock yards track.

In the first paragraph on sheet 3 of the decision the Commission points out (and correctly) that the initial 132 feet of this spur is owned and operated by the railroad; that the succeeding 1,619 feet south is owned by the stock yards but maintained by the railroad; and that continuing south of the 1,619 feet and connecting with it is another railroad owned section of the spur, about 793 feet long, with which the Swift sidetrack is connected. There was never any question upon this point and it is an undisputed fact that the Swift sidetrack connects with tracks of the New York Central and not with tracks owned by the stockyards.

The defendants except (page 31) to the restatement by the Commission of the principles announced in Baltimore Butchers Livestock Company v. P. B. & W. Ry. Co., 20 I. C. C. 124. The portion quoted by the Commission from the decision in that case is relevant and controlling here. It is merely to the effect that a carrier may not by private contract avoid compliance with duties imposed upon it by the Interstate Commerce Act.

The conclusions of the petition commencing at page 33
1023 are based upon the errors and fallacies stated in the earlier parts of the petition and therefore need not be separately answered.

Commencing on page 35 of the petition and continuing into page 37, defendants assert that the Commission misconstrued and misapplied the decision of the Supreme Court of Ohio in Morgan Run Ry. Co. v. Public Utilities Commission, 120 N. E. 295. According to defendants that decision was based upon deeds, relationships, and other matters extraneous to the public utilities act. We submit, however, that the question of who was the nephew, niece, or cousin of some one else was not the basis upon which the court placed its decision. The issue, as stated by the court, was as follows: "It is contended that the order of the commission requires the railway company to furnish facilities and *operate a line on property not owned by it*, that the commission has no jurisdiction to require one who is not a common carrier to act as such, and that *the tracks which are located on the land of the coal and mining company are the private tracks of that company, over which the commission has no jurisdiction.*" [Italics ours.]

The defendants next assert that the commission erred (petition, pp. 39–44) in not giving adequate weight to the decisions in Bedford-Bolling Green Stone Co. v. Oman, 134 Fed. 441, and Sholl Bros. v. Peoria & P. U. Ry. Co., 276 Ill. 267, 114 N. E. 529.

1024 The short answer to this contention is that in neither case did the plaintiff have a track which connected with the public tracks of the railroad company as does the Swift track in Cleveland.

The case next cited by defendants (petition, p. 42) Fort Worth Stockyards Company v. Brown, 161 S. W. (2d) 549, does not even relate to railroad property, but to the use of a runway in a public stockyards. The Federal Packers and Stockyards Act (7 U. S. C. A. secs. 181–229) contains no definition of stockyards property similar to the definition of "railroad" contained in section 1 (3) (a) of the Interstate Commerce Act. It might be noted in passing that a complete answer to all of these contentions will be found in Ayres Mercantile Co. v. Union Pac. R. Co., 16 F. (2d) 395, from which we quoted at pages 80–82 of our exceptions dated August 1, 1945; and in Alton R. Co. v. Illinois Commerce Commission, 305 U. S. 548, 83 L. ed. 344, quoted at pages 75–77 of the same document.

The defendants further assert (petition, p. 37) that the commission erred in applying the law stated in the five cases cited on that page. The short answer is that the law stated in those cases applied to the factual situation now before the Commission, whereas the cases cited by the defendants apply to situations where the facts were widely different and in some cases the property involved was not railroad property.

For example, defendants complain (petition, p. 38) that the decision and order ignore Limits Industrial Building Cor-

1025 poration v. B. & O. C. Terminal Co., 258 I. C. C. 438. The facts involved in that case, as well as the decision of the Commission, are discussed at length at pages 57–61 of our exceptions dated August 1, 1945. The important distinction to be noted is that the track of the complainant in the Limits case was not connected with the rails of the line-haul carrier, as are the tracks of complainant at Cleveland, and we assume that it was because of this vital distinction that this case was not mentioned in the Commission's decision.

CONCLUSION

The petition is necessarily based upon the assertion that the Commission erred in holding that track 1619 has been and is now devoted to a public use. But the facts are to the contrary. The Commission points out (sheets 3, 5, and 9 of decision) that track 1619 merely connects two portions of the railroad track owned and operated by the New York Central, which by its own New

York Central track serves 7 industries in the same general area; and that for many years track 1619 has been leased to the New York Central and has been maintained by it. The commission further finds that (sheets 11, 12, 17 of decision) this maintenance constituted compensation to the stockyards company for the use of the track. It might be added that compensation would have been unlawful unless the track were being used by and devoted to the public business of the railroad common carrier, the New York Central.

It is certain that this track has been devoted to a public
1026 use for more than 30 years by a common carrier by railroad which is subject (with respect to this track) to the applicable provisions of the Interstate Commerce Act. No particular form or ceremony is necessary in order to devote a track to the public service of a railroad common carrier. All that is required is the assent of the owner of the property and the fact of its being used for the public purposes intended by the lessor.

The facts are undisputed and the necessary legal conclusions are stated in the majority report. It is respectfully submitted that the petition for reconsideration should be denied.

ROSS DEAN RYNDER,
Attorney for Complainant.

CHICAGO, ILLINOIS,
Due date August 31, 1946.

1027 CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing by first-class mail a copy thereof to each party.

Dated at Chicago this 29th day of August 1946.

ROSS DEAN RYNDER,
Attorney for Complainant.

1028 In the Supreme Court of the United States

Statement of points to be relied upon and designation of parts of the record to be printed

Filed Aug. 5, 1947

Come now the appellants and say that they will rely in brief and oral argument before this Court on the points made in their assignment of errors on their appeal in the above-entitled cause.

Appellants further designate the entire record in this cause as filed in this Court for printing by the Clerk, excepting Exhibits 12, 13, 57, and 58, introduced before the Interstate Commerce Commission, and referred to in Item 17 of the praecipe, consisting.

of blueprints, which four exhibits need not be printed. Said blueprints may be considered a part of the record, although unprinted, for use in oral argument and briefs by all counsel the same as if printed.

PHILIP B. PERLMAN,
V. B.
Solicitor General,
For the United States of America.

1029 Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel.
Edward M. Reidy,
EDWARD M. REIDY,
Assistant Chief Counsel,
For Interstate Commerce Commission.
John P. Staley,
JOHN P. STALEY,
For Swift & Company.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed by this day mailing a copy of the same to all counsel for appellees in this case.

Dated August 4, 1947.

Edward J. Hickey, Jr.,
EDWARD J. HICKEY, JR.,
Special Assistant to the Attorney General.

1030 [File endorsement omitted.]

1031 Supreme Court of the United States

Order noting probable jurisdiction

October 13, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 52,153. Northern Ohio, D. C. U. S. Term No. 223. The United States of America, Interstate Commerce Commission and Swift & Company, Appellants vs. The Baltimore and Ohio Railroad Company, et al. Filed July 22, 1947. Term No. 223 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947